DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

1999 SUPPLEMENT

UPDATING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE OR FINALLY ADOPTED IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF APRIL 27, 1999, NOTES TO EMERGENCY LEGISLATION ADOPTED AS OF MARCH 31, 1999, REORGANIZATION PLANS NOT DISAPPROVED AS OF DECEMBER 31, 1998, AND NOTES TO DECISIONS REPORTED AS OF MARCH 1, 1999

VOLUME 4

1995 REPLACEMENT

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TITLE 6. HEALTH AND SAFETY.

Chapter 1. Public Health.

§ 6-117. Regulations to prevent spread of communicable diseases.

Delegation of Authority Pursuant to the "Preventive Health Services Amendment Act of 1985." — See Mayor's Order 98-141, August 20, 1998 (45 DCR 6588).

Disclosure of information. — District employees at mental hospital owed husband no duty to disclose wife's HIV-positive test results. On the contrary, the hospital staff owed a duty to wife to refrain from disclosing that information to anyone, including her husband, without her written consent or court order. N.O.L. v. District of Columbia, App. D.C., 674 A.2d 498 (1995).

§ 6-131. Establishment of the Department of Public Health.

Transfer of functions. — Pursuant to Reorganization Plan No. 4 of 1996 each of the functions assigned, and authorities delegated to the Director of the Department of Human Services as set forth in Sections III.(K), (L), and (P), of Reorganization Plan No. 3 of 1986, dated January 3, 1987; and

The administrative and management support functions in the Department of Human Services as set forth in Sections III.(A), (B), (C), (D), (E), and (F), of Reorganization Plan no. 3 of 1986, dated January 3, 1987, that relate to the functions set forth in section V.(A)(1) above were transferred to the Department of Health.

§ 6-132. Organization of the Department of Public Health.

Transfer of functions. — Pursuant to Reorganization Plan No. 4 of 1996 each of the functions assigned, and authorities delegated to the Director of the Department of Human Services as set forth in Sections III.(K), (L), and (P), of Reorganization Plan No. 3 of 1986, dated January 3, 1987; and

The administrative and management support functions in the Department of Human Services as set forth in Sections III.(A), (B), (C), (D), (E), and (F), of Reorganization Plan no. 3 of 1986, dated January 3, 1987, that relate to the functions set forth in section V.(A)(I) above were transferred to the Department of Health.

Chapter 2. Vital Records.

§ 6-201. Definitions.

Temporary amendment of section. — Section 3(a) of D.C. Law 12-103 added (7A) to read as follows:

"Unless otherwise specified as used in this chapter, the term:

*****

"(7A) 'IV-D agency' means the organizational unit of the District government, or any successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of child support orders and spousal support orders in which the spouse or former spouse is living with a child for whom the spousal support obligor also owes support."

Section 16(b) of D.C. Law 12-103 provides that the act shall expire after 225 days of its having taken effect.

Section 3(a) of D.C. Law 12-210 added (7A) to read as follows:

"Unless otherwise specified as used in this chapter, the term:

****

"'IV-D agency' means the organizational unit of the District government, or any successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of support orders."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(a) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(a) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(a) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(a) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 16 of D.C. Act 12-309 provides for the application of the act.

Section 15 of D.C. Act 12-503 provides for the application of the act.

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

Legislative history of Law 12-103. — Law 12-103, the "Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-365, which was retained by Council. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 30, 1998, it was assigned Act No. 12-279 and transmitted to both Houses of Congress for its review. D.C. Law 12-103 became effective on May 8, 1998.

Legislative history of Law 12-210. — Law 12-210, the "Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-657. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 16, 1998, it was assigned Act No. 12-497 and transmitted to both Houses of Congress for its review. D.C. Law 12-210 became effective on April 13, 1999.

§ 6-205. Birth registration.

Temporary amendment of section. — Section 3(b) of D.C. Law 12-103 amended (e)(3) to read as follows:

"(e) For the purposes of preparation and filing a birth certificate the following rules apply:

*****

"(3) If the mother was not married at the time of either conception or birth, or between conception and birth, the name of the father shall only be entered on the certificate if the parents have signed a voluntary acknowledgment of paternity pursuant to § 16-909.1(a)(1) (or pursuant to the laws and procedures of another state in which the voluntary acknowledgment was signed), or a court or administrative agency of competent jurisdiction has adjudicated as the father the person seeking to enter his name on the birth certificate. In such cases, upon written request to the Registrar by both parents, the surname of the child shall be entered on the certificate as that of the father."

Section 16(b) of D.C. Law 12-103 provides that the act shall expire after 225 days of its having taken effect.

Section 3(b) of D.C. Law 12-210 amended (e)(3) to read as follows:

"(e) For the purposes of preparation and filing a birth certificate the following rules apply:

****

"(3) If the mother was not married at the time of either conception or birth, or between conception and birth, the name of the father shall only be entered on the certificate if the parents have signed a voluntary acknowledgment of paternity pursuant to § 16-909.1(a)(1) (or pursuant to the laws and procedures of another state in which the voluntary acknowledgment was signed) or a court or administrative agency of competent jurisdiction has adjudicated as the father the person to be named as the father on the birth certificate. In such cases, upon written request to the Registrar by both parents, the surname of the child shall be entered on the certificate as that of the father."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3(b) of the

Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(b) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(b) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 16 of D.C. Act 12-309 provides for the application of the act.

Section 15 of D.C. Act 12-503 provides for the application of the act.

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

Legislative history of Law 12-103. — See note to § 6-201.

Legislative history of Law 12-210. — See note to § 6-201.

§ 6-205.1. Social Security numbers.

Temporary amendment of section. — Section 4 of D.C. Law 12-103 amended (b) to read as follows:

"(b) The Social Security account number shall be collected by the Register of Vital Records and made available only to the IV-D agency, and the Child Support Section of the Family Services Division of the Office of the Corporation Counsel for the establishment of paternity and the establishment, modification, and enforcement of child support orders. A Social Security account number shall not be available for any other purpose."

Section 16(b) of D.C. Law 12-103 provides that the act shall expire after 225 days of its having taken effect.

Section 4 of D.C. Law 12-210 amended (b) to read as follows:

"(b) The Social Security account number shall be collected by the Registrar of Vital Records and made available only to the IV-D agency for the establishment, modification, and enforcement of child support orders. A Social Security account number shall not be available for any other purpose."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 4 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 4 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 4 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 4 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 4 of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 16 of D.C. Act 12-309 provides for the application of the act.

Section 15 of D.C. Act 12-503 provides for the application of the act.

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

Legislative history of Law 12-103. — See note to § 6-201.

Legislative history of Law 12-210. — See note to § 6-201.

§ 6-211. Death registration.

Temporary amendment of section. — Section 3(c) of D.C. Law 12-103 amended (i) to read as follows:

"(i) Each death certificate shall contain a pronouncement of death section, a medical certification of cause of death section, and the Social Security number of the deceased. For the purposes of this subsection, the pronouncement of death section shall include all facts required to be reported in this section, except for those facts relating to the medical cause or causes of death reported pursuant to subsections (e) and (f) of this section."

Section 16(b) of D.C. Law 12-103 provides that the act shall expire after 225 days of its having taken effect.

Section 3(c) of D.C. Law 12-210 amended (i) to read as follows:

"(i) Each death certificate shall contain a pronouncement of death section, a medical certification of cause of death section, and the Social Security number of the deceased. For the

purposes of this subsection, the pronouncement of death section shall include all facts required to be reported in this section, except for those facts relating to the medical cause or causes of death reported pursuant to subsections (e) and (f) of this section."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(c) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(c) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(c) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(c) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 16 of D.C. Act 12-309 provides for the application of the act.

Section 15 of D.C. Act 12-503 provides for the application of the act.

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

Legislative history of Law 12-103. — See note to § 6-201.

Legislative history of Law 12-210. — See note to § 6-201.

§ 6-216. Divorce and annulment registration.

Temporary amendment of section. — Section 3(d) of D.C. Law 12-103 added (c) to read as follows:

"(c) The Social Security number of each individual who is subject to the divorce or annulment decree shall be included in the records of the Superior Court and Registrar concerning the divorce or annulment."

Section 16(b) of D.C. Law 12-103 provides that the act shall expire after 225 days of its having taken effect.

Section 3(d) of D.C. Law 12-210 added (c) to read as follows:

"(c) The Social Security number of each individual who is subject to the divorce or annulment decree shall be included in the records of the Superior Court and Registrar concerning the divorce or annulment."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(d) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(d) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(d) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(d) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 16 of D.C. Act 12-309 provides for the application of the act.

Section 15 of D.C. Act 12-503 provides for the application of the act.

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

Legislative history of Law 12-103. — See note to § 6-201.

Legislative history of Law 12-210. — See note to § 6-201.

§ 6-220. Copies or data from records.

Temporary amendment of section. — Section 3(e) of D.C. Law 12-103 added (h) to read as follows:

"(h) The Registrar shall disclose information contained in vital records, or copies of vital records, to the IV-D agency or the Corporation Counsel upon request, for purposes directly related to paternity establishment or the establishment, modification, or enforcement of a child support order or a spousal support order for a custodial parent, that is being sought, or was established, in conjunction with a child support order."

Section 16(b) of D.C. Law 12-103 provides that the act shall expire after 225 days of its having taken effect.

Section 3(e) of D.C. Law 12-210 added (h) to read as follows:

"(h) The Registrar shall disclose information contained in vital records, or copies of vital records, to the IV-D agency upon request, for purposes directly related to paternity establishment or the establishment, modification, or enforcement of a support order."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(e) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(e) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(e) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 16 of D.C. Act 12-309 provided for the application of the act.

Section 15 of D.C. Act 12-503 provides for the application of the act.

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

Legislative history of Law 12-103. — See note to § 6-201.

Legislative history of Law 12-210. — See note to § 6-201.

CHAPTER 3. PREVENTION OF BLINDNESS IN INFANTS.

Subchapter II. Newborn Screening.

§ 6-313. Neonatal testing for metabolic disorders.

Delegation of Authority Pursuant to the "Preventive Health Services Amendment Act of 1985." — See Mayor's Order 98-141, August 20, 1998 (45 DCR 6588).

§ 6-320. Effective date.

Emergency act amendments. — For temporary authorization for the establishment of a program to provide early intervention services designed to meet the developmental needs of infants and toddlers from birth through 2 years of age and their families on a sliding fee scale to provide a system of payment for early intervention services based on the income of the family, see § 2 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1994 (D.C. Act 10-320, August 4, 1994, 41 DCR 5369), § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1994 (D.C. Act 10-329, October 21, 1994, 41 DCR 7160), § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1995 (D.C. Act 11-1, January 18, 1995, 42 DCR 537), § 2 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1996 (D.C. Act 11-188, January 25, 1996, 43 DCR 395), and see § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Review Emergency Act of 1997 (D.C. Act 12-41, March 31, 1997, 44 DCR 2089).

Section 3 of D.C. Act 12-41 provides that the Mayor shall issue rules to implement the provisions of the act.

Subchapter III. Early Intervention Sliding Program.

§ 6-331. Program establishment.

(a) There is established in the District the Early Intervention Services Program ("Program") to provide early intervention services for infants and toddlers from birth through 2 years of age and their families. The Program shall qualify the District to receive funds pursuant to the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. 1471 *et seq.*) ("IDEA").

(b) The Mayor may apply for federal funds pursuant to the IDEA to provide early intervention services under the Program. (Mar. 14, 1995, D.C. Law 10-199, § 2, 41 DCR 7174, May 29, 1996, D.C. Law 11-132, § 2, 43 DCR 1025; Apr. 9, 1997, D.C. Law 11-172, § 2, 43 DCR 4491.)

Temporary addition of subchapter. — D.C. Law 10-199 added this subchapter.

Section 4(b) of D.C. Law 10-199 provided that the act shall expire on the 225th day of its having taken effect. D.C. Law 10-199 became effective March 14, 1995.

D.C. Law 11-132 added this subchapter.

Section 5(b) of D.C. Law 11-132 provides that the act shall expire after 225 days of its having taken effect. D.C. Law 11-132 became effective May 29, 1996.

Emergency act amendments. — For temporary addition of subchapter, see §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1994 (D.C. Act 10-320, August 4, 1994, 41 DCR 5369), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1994 (D.C. Act 10-329, October 21, 1994, 41 DCR 7160), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1995 (D.C. Act 11-1, January 18, 1995, 42 DCR 537), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1996 (D.C. Act 11-188, January 25, 1996, 43 DCR 395), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Review Emergency Act of 1996 (D.C. Act 11-245, April 11, 1996, 43 DCR 2121), and §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Second Congressional Review Emergency Act of 1996 (D.C. Act 11-484, January 2, 1997, 44 DCR 628).

Section 4 of D.C. Act 11-484 provides for the application of the act.

Legislative history of Law 10-199. — Law 10-199, the "Early Intervention Services Sliding Fee Scale Establishment Temporary Act of 1994," was introduced in Council and assigned Bill No. 10-725. The Bill was adopted on first and second readings on July 19, 1994, and October 4, 1994, respectively. Signed by the Mayor on October 21, 1994, it was assigned Act No. 10-336 and transmitted to both Houses of Congress for its review. D.C. Law 10-199 became effective on March 14, 1995.

Legislative history of Law 11-132. — Law 11-132, the "Early intervention Services Sliding Fee Scale Establishment Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-535. The Bill was adopted on first and second readings on January 4, 1996, and February 20, 1996, respectively. Signed by the Mayor on February 20, 1996, it was assigned Act No. 11-216 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 29, 1996.

Legislative history of Law 11-172. — Law 11-172, the "Early Intervention Services Sliding Fee Scale Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-608, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-320 and transmitted to both Houses of Congress for its review. D.C. Law 11-172 became effective on April 9, 1997.

Delegation of Authority Pursuant to D.C. Law 11-172, the "Early Intervention Services Sliding Fee Scale Establishment Act of 1996." — See Mayor's Order 97-110, June 18, 1997 (44 DCR 4128).

§ 6-332. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this subchapter.

(b) The rules shall include a sliding fee scale, based on the income of the family, for early intervention services for infants and toddlers from birth through 2 years of age and their families. (Mar. 14, 1995, D.C. Law 10-199, § 3, 41 DCR 7174; May 29, 1996, D.C. Law 11-132, § 3, 43 DCR 1025; Apr. 9 1997, D.C. Law 11-172, § 3, 43 DCR 4491.)

Temporary addition of subchapter. — See note to § 6-331.

Emergency act amendments. — For temporary addition of subchapter, see note to § 6-331.

Legislative history of Law 10-199. — See note to § 6-331.

Legislative history of Law 11-132. — See note to § 6-331.

Legislative history of Law 11-172. — See note to § 6-331.

CHAPTER 5. GARBAGE.

§ 6-504. Collection and disposal of refuse authorized as municipal function; purchase or lease of facilities; sale of products; gratuities prohibited.

Restriction on public works appropriation. — Public Law 104-194, 110 Stat. 2360, the District of Columbia Appropriations Act, 1997, provided for Public Works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and purchase of passenger-carrying vehicles for replacement only, $247,967,000 and 1,252 full-time equivalent positions (including $234,391,000 and 1,149 full-time equivalent positions from local funds, $3,047,000 and 32 full-time equivalent positions from Federal funds, and $10,529,000 and 71 full-time equivalent positions from other funds): Provided, That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.

CHAPTER 7. HAZARDOUS WASTE MANAGEMENT.

Subchapter I. General Provisions.

Sec.
6-703. Permits.

Subchapter IV. Pesticide Operations.

6-751.1. Definitions.
6-751.2. Registration pesticides.
6-751.3. Pesticide applicators.
6-751.4. Registered employees.
6-751.5. Pesticide dealers.
6-751.6. Pesticide operators.
6-751.7. Liability insurance.
6-751.8. Application of this subchapter to governmental entities and public applicators.
Sec.
6-751.9. Records and reports.
6-751.10. Denial, suspension, modification, and revocation of certification or license.
6-751.11. Administration and enforcement; adoption of regulations.
6-751.12. Enforcement.
6-751.13. Reports of pesticide accidents or losses.
6-751.14. Storage and disposal.
6-751.15. Reciprocity.
6-751.16. Cooperative agreements.
6-751.17. Unlawful acts.
6-751.18. Penalties.
6-751.19. Severability.

Subchapter I. General Provisions.

§ 6-701. Purposes and findings.

Delegation of Authority Pursuant to D.C. Law 2-64, the "District of Columbia Hazardous Waste Management Act of 1977." — See Mayor's Order 98-55, April 15, 1998 (45 DCR 2704).

§ 6-703. Permits.

* * * * *

(c) Any license issued pursuant to this section shall be issued as a Class A Environmental Materials endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (1973 Ed., § 6-523; Mar. 23, 1978, D.C. Law 2-64, § 4, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(c), 31 DCR 3032; Oct. 18, 1989, D.C. Law 8-37, § 2(c), 36 DCR 5748; Apr. 20, 1999, D.C. Law 12-261, § 2003(h), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (c).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-210 became effective on April 20, 1999.

§ 6-705. Rules and regulations.

District of Columbia Hazardous Waste Management Act Proposed Rulemaking Approval Resolution of 1995. — Pursuant to Proposed Resolution 11-174, deemed approved October 11, 1995, Council approved the proposed rulemaking adopting Chapters 40 through 54 (Hazardous Waste Regulations) of Title 20 DCMR issued pursuant to the "District of Columbia Hazardous Waste Management Act of 1977", as amended.

Subchapter IV. Pesticide Operations.

§ 6-751.1. Definitions.

As used in this subchapter:

(a) The term "active ingredient" means:

(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(b) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(c) The term "adulteration" refers to a pesticide the strength or purity of which falls below the professed standard or quality as expressed in its labeling or under which it is sold, or the total or partial substitution of any substance for the pesticide, or the total or partial abstraction of any valuable constituent of the pesticide.

(d) The term "animal" means all vertebrate and invertebrate species, including but not limited to man, other mammals, birds, fish, and shellfish.

(e) The term "certified applicator" means any individual who is certified by the Mayor as being competent to use or supervise the use of any restricted use pesticide or class of restricted use pesticides covered by his certification.

(f) The term "commercial applicator" means an individual, whether or not he is a private applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by the definition of "private applicator".

(g) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(h) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(i) The term "device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest of any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(j) The term "distribute" means to offer for sale, hold for sale, sell, barter, or trade a commodity.

(k) The term "District" means the District of Columbia.

(l) The term "environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(m) The term "equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized hand-sized household apparatus used to apply any pesticide.

(n) The term "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.), as amended.

(o) The term "fungus" means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(p) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of

arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(q) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its container or wrappers.

(r) The term "labeling" means all labels and all other written, printed, or graphic matter:

(A) accompanying the pesticide or device at any time, or

(B) accompanying or referring to the pesticide or device except when accurate non-misleading references are made to current official publications of Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

(s) The term "land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(t) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.

(u) The term "misbranded" means:

(1) a pesticide is misbranded if:

(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3) of FIFRA;

(C) it is an imitation of, or is offered for sale under the name of, another pesticide;

(D) its label does not bear the registration number assigned under section 7 of FIFRA to each establishment in which it was produced;

(E) any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if compiled with, together with any requirements imposed under section 3(d) of FIFRA are adequate to protect health and the environment;

(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of FIFRA, is adequate to protect health and the environment.

(2) A pesticide is misbranded if:

(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed

under customary conditions of purchase, except that pesticide is not misbranded under this subparagraph if:

(i) the size of form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

(B) the labeling does not contain a statement of the use classification under which the product is registered;

(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) the name and address of the producer, registrant, or person for whom produced;

(ii) the name, brand, or trademark under which the pesticide is sold;

(iii) the net weight or measure of the content: provided, that the Administrator may permit reasonable variations; and

(iv) when required by regulation of the Administrator to effectuate the purposes of FIFRA, the registration number assigned to the pesticide under FIFRA, and the use classification; and

(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by FIFRA:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(v) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

(w) The term "person" means any individual, partnership, association, corporation, company, joint stock association, or any organized group of people whether incorporated or not, and includes any trustee, receiver, or assignee.

(x) The term "pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which commonly is considered to be detrimental to man or his interests or which the Mayor may declare to be detrimental.

(y) The term "pesticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(z) The term "pesticide applicator" means an individual who is a (1) commercial applicator; (2) private applicator; (3) public applicator; or (4) registered employee.

(aa) The term "pesticide dealer" means any person who distributes to the ultimate user restricted use pesticides or any pesticide whose use or distribution are further restricted by the Mayor.

(bb) The term "pesticide operator" means (1) any person who owns or manages a pesticide application business in which pesticides are applied upon the lands of another for hire or compensation; or (2) except as other wise provided under the definition of "private applicator", the owner or manager of any commercial firm, business, corporation, or private institution, who directly or through his employees uses restricted use pesticides on property owned, managed, or leased by such commercial firm, business, corporation, or private institution; or (3) any District or other governmental agency whose officials or employees apply pesticides as part of their normal duties.

(cc) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, it shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

(dd) The term "private applicator" means any individual who uses any restricted use pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(ee) The term "public applicator" means a commercial applicator who is an employee of the District or of a governmental agency who is authorized to use or supervise the use of pesticides.

(ff) The term "registered employee" means an individual who is registered with the Mayor, pursuant to § 6-751.4, and who works under the direct supervision of a licensed commercial or public applicator.

(gg) The term "restricted use pesticides" means any pesticides or pesticide use classified by the Administrator for restricted use; or any pesticide, which when used as directed or in accordance with a commonly recognized practice, the Mayor determines, subsequent to a hearing, that additional restrictions for that use are necessary in order to prevent a hazard to the applicator or other persons, or to prevent unreasonable adverse effects upon the environment.

(hh) The term "under the direct supervision of" means that unless otherwise prescribed by its labeling or other restrictions imposed by the Mayor, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent registered employee acting under the instruction and control of a certified applicator who is available if and when needed, even though such certified applicator may not be physically present at the time and place the pesticide is applied.

(ii) The term "weed" means any plant which grows where it is not wanted. (Apr. 18, 1978, D.C. Law 2-70, § 2, 24 DCR 6867.)

Legislative history of Law 2-70. — Law 2-70, the "Pesticide Operations Act of 1977," was introduced in Council and assigned Bill No. 2-180. The Bill was adopted on first and second readings on November 8, 1977, and November 22, 1977, respectively. Signed by the Mayor on February 3, 1978, it was assigned Act No. 2-145 and transmitted to both Houses of Congress for its review. D.C. Law 2-70 became effective on April 18, 1978.

§ 6-751.2. Registration pesticides.

(a) Only those compounds that are registered with the Pesticide Registration Division of the Environmental Protection Agency shall be manufactured, sold, shipped, used, or applied in the District of Columbia, and they shall be used only in the manner or manners specified and approved by the Environmental Protection Agency.

(b) The Mayor may in his discretion require that pesticides registered with the Environmental Protection Agency which are distributed within the District of Columbia also be registered with the Mayor. (Apr. 18, 1978, D.C. Law 2-70, § 3, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.3. Pesticide applicators.

(a) *Licensing* (1) No person shall purchase, use, or supervise the use of any restricted use pesticide unless he is licensed by the Mayor in accordance with this subchapter and the rules and regulations promulgated thereto, except that a registered employee may purchase and use such pesticides under the direct supervision of a licensed commercial or public applicator.

(2) Application for a pesticide applicator's license shall be made in writing on a form prescribed by the Mayor. The Mayor shall establish fees in amounts sufficient to cover the cost of the licensing. A pesticide applicator license shall be valid for the period of time prescribed by the Mayor. The Mayor shall provide for the issuance of appropriate credentials for the applicator.

(b) *Certification* (1) No person may be licensed to use any restricted use pesticide unless he has been certified by the Mayor in accordance with this subchapter and the rules and regulations promulgated pursuant thereto.

(A) After a public hearing held in conformance with the provisions of subchapter I of Chapter 15 of Title 1, the Mayor shall prescribe regulations for the certification of private and commercial applicators.

(B) The Mayor shall establish categories and, where applicable, may establish subcategories, of commercial applicators, depending upon the types of pesticides used, the purposes for which they are used, the types of equipment required in their application, the degree of knowledge or skill required in their application, and other relevant factors.

(C) The Mayor shall require an applicant for commercial applicator certification to show, by written examination, and, as applicable, by practical testing, that he is competent in the proper handling, use, and application of pesticides in the certification categories for which he has applied, and that he knows the dangers involved and precautions to be taken in connection with the

use and application of such pesticides, and to meet such other requirements as the Mayor may hereafter prescribe.

(D) The Mayor shall develop procedures to ensure that all certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(E) The Mayor shall establish a system for determining the competency of applicants for private applicator certification in the use and handling of pesticides.

(F) Application for certification shall be made in writing on a form prescribed by the Mayor. Applicator certification shall be valid for such period as prescribed by the Mayor. The Mayor shall provide for the issuance of appropriate credentials specifying the categories in which the applicator has demonstrated competency.

(G) If the Mayor does not certify the applicator under this section, he shall inform the applicant in writing of the reasons therefor. (Apr. 18, 1978, D.C. Law 2-70, § 4, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.4. Registered employees.

(a) No person, not licensed pursuant to this subchapter and not acting as a private applicator, shall administer any pesticide unless he is registered with the Mayor and is acting under the direct supervision of a licensed applicator.

(b) Application for registration shall be made in writing on a form prescribed by the Mayor and the registration shall be valid for the time period prescribed by the Mayor. The Mayor shall provide for the issuance of appropriate credentials for all registrants. (Apr. 18, 1978, D.C. Law 2-70, § 5, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.5. Pesticide dealers.

(a) No person shall act in the capacity of, or advertise as, or assume to act as a pesticide dealer at any time unless he is licensed by the Mayor in accordance with this subchapter and the rules and regulations promulgated pursuant thereto.

(b)(1) The Mayor shall provide for the licensing of pesticide dealers located within the District; provided, that any manufacturer, registrant, or distributor whose products are distributed or who distributes products in the District and who has no pesticide dealer outlet licensed within the District shall obtain a pesticide dealer's license from the Mayor for his principal out-of-state location or outlet.

(2) Application for a pesticide dealer's license shall be made in writing on a form prescribed by the Mayor.

(3) The Mayor shall establish fees in an amount sufficient to cover the cost of the licensing. The license shall be valid for the time period prescribed by the Mayor.

(c) A pesticide dealer shall be responsible for the acts of each of his employees in the solicitation and sale of restricted use pesticides, and for all claims and recommendations for the use of restricted use pesticides.

(d) The provisions of this section shall not apply to a licensed pesticide operator who sells restricted use pesticides only as an integral part of his pesticide application service, or to any District or other governmental agency which provides pesticides only for its own programs. (Apr. 18, 1978, D.C. Law 2-70, § 6, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.6. Pesticide operators.

(a) No person shall act in the capacity of a pesticide operator, or advertise as or assume to act as a pesticide operator at any time unless he is licensed by the Mayor in accordance with this subchapter and the rules and regulations promulgated pursuant thereto.

(b) Application for a pesticide operator license shall be made in writing on a form prescribed by the Mayor. Each application shall contain information regarding the applicant's proposed operations, license classification or classifications applied for, and shall include the following:

(1) the full name of the person applying for the license;

(2) the full name of each member of the firm or partnership, or the names of the principal officers of the association, corporation, or group, if the applicant is a person other than an individual;

(3) the business address of the applicant;

(4) a certificate of liability insurance as required by § 6-751.7;

(5) designation of those individuals who are certified and licensed in each category in which the business will engage; and

(6) such other information as the Mayor may prescribe.

(c)(1) No licensed pesticide operator (as defined in § 6-751.1(bb)(1) and (bb)(3)) shall permit the use of any pesticide by any person who is not a licensed commercial or public applicator designated pursuant to § 6-751.6(b)(5), or a registered employee of the pesticide operator acting under the direct supervision of the licensed applicator.

(2) No licensed pesticide operator (as defined in § 6-751.1(bb)(2)) shall permit the use of any restricted use pesticide by any person who is not a licensed commercial or public applicator designated pursuant to § 6-751.6(b)(5), or a registered employee of the pesticide operator acting under the direct supervision of the licensed applicator. (Apr. 18, 1978, D.C. Law 2-70, § 7, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.7. Liability insurance.

(a) The Mayor shall not issue a pesticide operator's license until the applicant has furnished evidence of financial responsibility in the form of liability insurance for the protection of persons who may suffer damages as a result of the operations of the applicant.

(b) The amount of minimum financial responsibility shall be established by the Mayor and shall be maintained at not less than that sum as long as the pesticide operator engages in business in those categories for which his license is issued.

(c) The insurer of a pesticide operator shall notify the Mayor in writing at least ten (10) days prior to the effective date of cancellation, if a licensee's policy is to be cancelled. It shall be the licensee's responsibility to inform his insurer of this requirement.

(d) Nothing in this subchapter shall be construed to relieve any person from liability for any damages to the person or lands of another caused by the use of pesticides even though such use conforms to regulations prescribed by the Mayor. (Apr. 18, 1978, D.C. Law 2-70, § 8, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.8. Application of this subchapter to governmental entities and public applicators.

(a) Except as otherwise provided, all District and other governmental agencies shall be subject to the provisions of this subchapter and to all rules and regulations promulgated pursuant thereto concerning the application of pesticides.

(b) Public applicators for District and other governmental agencies shall be subject to examination (as provided for in § 6-751.3) and to the licensing provisions of § 6-751.4. The Mayor shall issue a limited license to each qualified public applicator. No fee shall be charged for the issuance of such a license to an employee of the District. The public applicator license shall be valid only when the licensee is engaged as an applicator in using or supervising the use of pesticides by District and other governmental agencies on lands owned or rented by such agencies or is acting within the scope of his employment.

(c) District and other governmental agencies employing pesticide applicators shall not be subject to the financial responsibility requirements of § 6-751.7. (Apr. 18, 1978, D.C. Law 2-70, § 9, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.9. Records and reports.

(a) Commercial applicators and pesticide operators shall maintain records containing the information the Mayor may promulgate by regulation.

(b) Pesticide dealers shall maintain records containing such information as the Mayor shall promulgate by regulation to adequately identify purchases of restricted use pesticides and the materials purchased.

(c) The Mayor may, pursuant to regulations promulgated by him, require private applicators to maintain records or file reports or other documents.

(d) Each person shall upon written request furnish the Mayor with copies of any requested records or any other information requested by the Mayor.

(e) The records required to be maintained by subsections (a), (b), and (c) shall be subject to inspection by the Mayor at any time during business hours. The applicator or operator who prepared them shall transfer to the Mayor as required by appropriate regulations all such records which were prepared during that period which is determined by the regulations, and the Mayor shall preserve them for not less than ten (10) years. Should any such applicator or operator go out of business all such records in his or her possession shall immediately be transferred to the Mayor. (Apr. 18, 1978, D.C. Law 2-70, § 10, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.10. Denial, suspension, modification, and revocation of certification or license.

(a) In denying a license or certificate, or before revoking, modifying, or suspending a license or certificate, the Mayor shall notify the applicant, licensee, or certificate holder in writing of the proposed action and the basis therefor. The grounds upon which the Mayor may deny, revoke, modify or suspend a license or certificate include a violation of any of the unlawful acts specified in § 6-751.17, or the violation of any of the rules and regulations promulgated pursuant to this subchapter. The applicant, licensee, or certificate holder shall have seven (7) business days from the date of receipt of the notice of proposed action to request a hearing before the Mayor to show cause why the license or certificate should not be denied, revoked, modified or suspended.

(b) The Mayor may deny the issuance of a license, or revoke, modify, or suspend a license or certificate issued under this subchapter if the applicant, licensee or certificate holder has been convicted under FIFRA, or is subject to a final order imposing a civil penalty under FIFRA.

(c) The Mayor may issue a warning notice to an applicant, licensee, or certificate holder for a violation or threatened violation of any of the unlawful acts specified in § 6-751.17.

(d) The Mayor may suspend a license or certificate effective immediately, to protect the public health, safety, or welfare pending further investigation.

(e) The Mayor shall not reissue a license to one whose license has been revoked until after at least one hundred and eighty (180) days following the revocation.

(f) Any person aggrieved by any action of the Mayor may obtain a review thereof by appealing to the Board of Appeals and Review. The decision of the Board of Appeals and Review shall be the final administrative remedy. Any person adversely affected by a decision of the Board may seek judicial review thereof in the District of Columbia Court of Appeals, pursuant to subchapter I of Chapter 15 of Title 1. (Apr. 18, 1978, D.C. Law 2-70, § 11, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.11. Administration and enforcement; adoption of regulations.

(a) The Mayor shall administer and enforce the provisions of this subchapter, and is authorized to promulgate, rescind, and amend regulations, after a public hearing following due notice in conformance with the provisions of subchapter I of Chapter 15 of Title 1, to carry out the provisions of this subchapter.

(b) The Mayor is authorized, after a public hearing following due notice, to declare any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganism on or in living man or other living animals) which is injurious to the environment or the health of man or other animals to be a pest.

(c) The Mayor is authorized to prescribe pesticides and equipment to be used; restrict or prohibit the use of such materials to the extent necessary to protect the public health and safety; and to take such other action as he may deem necessary to prevent any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(d) When the Mayor has reasonable cause to believe a pesticide or device is being distributed, stored, transported, offered for sale, or used in violation of any of the provisions of this subchapter, or any of the regulations prescribed under the authority of this subchapter, he may issue a written "stop sale, use, or removal" order to the owner or custodian of any such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

(e) Any pesticide or device that is being transported, or having been transported is sold or offered for sale in the District, or is imported from a foreign country, in violation of any of the provisions of this subchapter, may be proceeded against in any court of competent jurisdiction by a process in rem for condemnation if:

(1) in the case of a pesticide, (A) it is adulterated or misbranded; (B) it is not registered pursuant to the provisions of this subchapter; (C) its labeling fails to bear the information required by the FIFRA; (D) it is not colored or discolored and such coloring or discoloring is required under the FIFRA; or (E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

(2) in case of a device, it is misbranded; or

(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this subchapter and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claim and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

(f) If the pesticide or device is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if sold, less the court costs, shall be paid into the District Treasury and credited to the general fund; provided, that the pesticide or device shall not be sold contrary to the provisions of this subchapter, the FIFRA, or the laws of the jurisdiction in which it is sold; provided further, that upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned upon assurances that the pesticide shall not be sold or otherwise disposed of contrary to the provisions of this subchapter, the FIFRA, or the laws of any jurisdiction in which it is sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be to the proceedings used for the condemnation of insanitary buildings under § 5-618.

(g) When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

(h) Nothing in this subchapter shall be construed as requiring the District to prosecute or institute other proceedings for minor violations of the subchapter whenever the Mayor believes that the public interest will be best served by a suitable notice in writing to the alleged violator.

(i) The Mayor may bring an action to enjoin the violation or threatened violation of any provision of this subchapter or any regulation made pursuant to this subchapter.

(j) In order to comply with section 4 of the FIFRA, the Mayor is authorized to make such reports to the Environmental Protection Agency in the form and containing the information as the Administrator may from time to time require. (Apr. 18, 1978, D.C. Law 2-70, § 12, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.12. Enforcement.

(a) For the purpose of carrying out the provisions of this subchapter, the Mayor may enter upon any public or private land in a reasonable and lawful manner during normal business hours for purposes of sampling, inspection, and observation.

(b) If denied access to any land, the Mayor may apply to a court of competent jurisdiction for a search warrant.

(c) The Mayor, or any person, may bring an action in the Superior Court of the District of Columbia to enjoin the violation or threatened violation of any provision of this subchapter or of any rules or regulation promulgated thereto. (Apr. 18, 1978, D.C. Law 2-70, § 13, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.13. Reports of pesticide accidents or losses.

The Mayor may require the reporting of significant pesticide accidents or incidents to a designated District agency. (Apr. 18, 1978, D.C. Law 2-70, § 14, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.14. Storage and disposal.

No person shall transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or as to pollute any waterway in a way harmful to any wildlife therein. The Mayor shall publish regulations for the storage and disposal of pesticides and pesticide containers. (Apr. 18, 1978, D.C. Law 2-70, § 15, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.15. Reciprocity.

The Mayor may waive all or part of any applicator certification examination required by this subchapter and issue a license to a nonresident of the District of Columbia who is certified by a state under a certification plan that has been approved by the Administrator and which is substantially in accordance with the provisions of this subchapter; provided, that such state has a reciprocity provision granting similar accommodation to applicators certified by the District of Columbia. Certifications issued pursuant to this section may be suspended or revoked in the same manner and on the same grounds as other certifications issued pursuant to this subchapter, or upon suspension or revocation of the applicator's certification by the state, issuing the applicator's original certification. (Apr. 18, 1978, D.C. Law 2-70, § 16, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.16. Cooperative agreements.

The Mayor may cooperate, receive grants-in-aid, and enter into agreements with any agency of the Federal Government or the District, or with any agency of a state, to obtain assistance in the implementation of this subchapter, or in the enforcement of the FIFRA. (Apr. 18, 1978, D.C. Law 2-70, § 17, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.17. Unlawful acts.

It shall be unlawful for any person to:

(a) Make a pesticide recommendation or use a pesticide in a manner inconsistent with the labeling thereof, or in violation of the restrictions imposed by the Environmental Protection Agency or the Mayor on the use of that pesticide;

(b) Falsify, or refuse or neglect to maintain or make available, records required to be kept by this subchapter and by the rules and regulations promulgated pursuant thereto;

(c) Use fraud or misrepresentation in applying for certification or a license;

(d) Refuse or neglect to comply with any limitations or restrictions on his certification or license;

(e) Make false or fraudulent claims through any media which misrepresent the effect of a pesticide or the method to be utilized in the application of a pesticide;

(f) Apply any known ineffective or improper pesticide;

(g) Operate faulty or unsafe equipment;

(h) Use or supervise the use of a pesticide in a faulty, careless, or negligent manner;

(i) Make false or fraudulent records, invoices, or reports;

(j) Aid, abet, or conspire with any other person to evade the provisions of this subchapter;

(k) Make fraudulent or misleading statements during or after an inspection concerning a pest infestation;

(l) Impersonate any federal, state, or District inspector or official;

(m) Distribute any pesticide which is adulterated or misbranded, or any device which is misbranded;

(n) Fail to register a pesticide in accordance with the provisions of this subchapter;

(o) Violate any other provision of this subchapter or of any rule or regulation promulgated by the Mayor pursuant thereto. (Apr. 18, 1978, D.C. Law 2-70, § 18, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.18. Penalties.

Any person violating any provision of this subchapter or of any rule or regulation promulgated pursuant thereto, shall, upon conviction, be fined not more than three hundred dollars ($300) or be imprisoned for not more than ninety (90) days, or both. (Apr. 18, 1978, D.C. Law 2-70, § 19, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

§ 6-751.19. Severability.

If any provision of this subchapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this subchapter and applicability thereof to other persons and circumstances shall not be affected thereby. (Apr. 18, 1978, D.C. Law 2-70, § 20, 24 DCR 6867.)

Legislative history of Law 2-70. — See note to § 6-751.1.

CHAPTER 9. ENVIRONMENTAL CONTROLS.

Subchapter I. Air Pollution Control.

§ 6-904. Testing of Solid Waste Reduction Center Number 1 for compliance with certain emission standards; submission of test results and reports to Council.

Delegation of Authority Pursuant to D.C. Law 5-165, the "D.C. Air Pollution Control Act of 1984." — See Mayor's Order 98-44, April 10, 1998 (45 DCR 2689).

§ 6-905. Comprehensive air pollution control program.

(a) The Mayor of the District of Columbia shall prepare a comprehensive program for the control and prevention of air pollution in the District of Columbia. This program shall provide for the administration and enforcement by the Mayor of the District of Columbia of the rules stated in 20 DCMR. As part of the program, the Mayor of the District of Columbia:

* * * * *

(July 25, 1995, D.C. Law 11-30, § 3, 42 DCR 1547.)

Effect of amendments. — D.C. Law 11-30 validated a previously made change in (a).

Legislative history of Law 11-30. — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

§ 6-906. Rules.

(a) The Mayor may issue or amend any rule needed to comply with the requirements of federal laws and regulations in implementing the District's comprehensive air pollution control program.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirement imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(c) The Mayor may also issue or amend any rule needed to implement the provisions of this subchapter pursuant to subchapter I of Chapter 15 of Title 1. Rules issued pursuant to this subsection are not subject to the 45-day Council review period prescribed in subsection (b) of this section. (Mar. 15, 1985, D.C. Law 5-165, § 6, 32 DCR 562; Mar. 27, 1993, D.C. Law 9-262, § 3, 40 DCR 1032; Apr. 26, 1994, D.C. Law 10-106, § 5, 41 DCR 1014; May 16, 1995, D.C. Law 11-15, § 2, 42 DCR 1392; Apr. 9, 1997, D.C. Law 11-255, § 58, 44 DCR 1271.)

Effect of amendments.

D.C. Law 11-15 rewrote this section.

D.C. Law 11-255 added (c).

Temporary amendments of section.

Section 2 of D.C. Law 11-256 added (c) which reads: "(c) The Mayor may also issue or amend any rule needed to implement the provisions of this act pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 et. seq). Rules issued pursuant to this subsection are not subject to the 45-day Council review period prescribed in subsection (b) of this section."

Section 4(b) of D.C. Law 11-256 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Air Pollution Control Amendment Act of 1996, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see § 2 of the Air Pollution Control Emergency Amendment Act of 1996 (D.C. Act 11-450, December 5, 1996, 43 DCR 6682), and § 2 of the Air Pollution Control Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-16, March 3, 1997, 44 DCR 1754).

Legislative history of Law 11-15. — Law 11-15, the "Air Pollution Control Program Regulations Federal Conformity Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-40, which was retained by Council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on

March 9, 1995, it was assigned Act No. 11-27 and transmitted to both Houses of Congress for its review. D.C. Law 11-15 became effective on May 16, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 11-256. — Law 11-256, the "Air Pollution Control Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-939. The Bill was adopted in first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-521 and transmitted to both Houses of Congress for its review. D.C. Law 11-256 became effective on April 9, 1997.

District of Columbia Air Pollution Control Act of 1984 Proposed Rulemaking Approval Resolution of 1998. — Pursuant to Resolution 12-(PR12-693), effective June 19, 1998, the Council approved the proposed rulemaking to amend Chapters 1 through 5 and Chapters 7 and 8 of Title 20 (Environment) DCMR, issued pursuant to the "District of Columbia Air Pollution Control Act of 1984".

Subchapter II. Restriction on Smoking.

§ 6-911. Findings and purpose.

Delegation of Authority Pursuant to D.C. Law 3-22, the "District of Columbia Smoking Restrictions Act of 1979." — See Mayor's Order 98-138, August 20, 2998 (45 DCR 6588).

Amended Delegation of Authority Pursuant to D.C. Law 3-22, the "District of Columbia Smoking Restrictions Act of 1979." — See Mayor's Order 98-161, September 25, 1998 (45 DCR 7734).

Failure to enforce nonsmoking policies. — Defendant violated the plaintiff inmates' constitutional and statutory rights by failing to enforce nonsmoking policies in certain Department of Corrections facilities and by exposing the plaintiffs to environmental tobacco smoke. Crowder v. District of Columbia, 959 F. Supp. 6 (D.D.C. 1997).

The court enjoined the defendant to take all steps necessary to assure that named plaintiffs would be assigned sleeping quarters with other nonsmokers and to otherwise enforce its nonsmoking policy in areas where the plaintiffs were compelled to be. Crowder v. District of Columbia, 959 F. Supp. 6 (D.D.C. 1997).

Cited in Crowder v. Kelly, 928 F. Supp. 2 (D.D.C. 1996).

§ 6-913. Smoking restrictions.

Failure to enforce nonsmoking policies. — Defendant violated the plaintiff inmates' constitutional and statutory rights by failing to enforce nonsmoking policies in certain Department of Corrections facilities and by exposing the plaintiffs to environmental tobacco smoke. Crowder v. District of Columbia, 959 F. Supp. 6 (D.D.C. 1997).

Subchapter III. Water Pollution Control.

§ 6-921. Definitions.

Delegation of Authority Pursuant to D.C. Law 5-188, the "Water Pollution Control Act of 1984." — See Mayor's Order 98-50, April 15, 1998 (45 DCR 2696).

§ 6-932. Mayor authorized to issue research grants.

Delegation of Authority Pursuant to D.C. Law 5-188, the "Water Pollution Control Act of 1984." — See Mayor's Order 98-50, April 15, 1998 (45 DCR 2696).

Subchapter IV. Wastewater Control.

§ 6-952. Definitions.

For the purposes of this subchapter, the term:

(1) "Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.);

(1A) "Categorical pretreatment standards" or "Categorical standards" means any regulation promulgated by the Environmental Protection Agency ("EPA") which specifies quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial categories.

(1B) "CFR" means the Code of Federal Regulations.

* * * * *

(3A) "Industrial user" means a non-domestic user who discharges, causes, or permits the discharge of wastewater into the District's wastewater system.

* * * * *

(5A) "National pretreatment standards", "Pretreatment standards", or "Standards" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the Clean Water Act. National pretreatment standards, Pretreatment standards, or Standards, also includes the prohibitions in § 6-956.

* * * * *

(7A) "NPDES permit" means the National Pollution Discharge Elimination System permit issued by the EPA to the District for the operation of the Blue Plains Wastewater Treatment Facility in effect on May 8, 1998, and as it may be amended in the future, and any successor permits issued by the EPA to either the District or to WASA.

(7B) "Pass through" means any discharge which exits the District's wastewater system into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, causes or may cause, or contributes to, a violation of any requirement of the NPDES permit (including an increase in the magnitude of duration of a violation).

* * * * *

(10A) "Pretreatment requirements" means any federal, state, or local substantive or procedural requirement related to pretreatment, other than National Pretreatment Standard, imposed on an Industrial User.

(10B) "Prohibited Discharge Standards" means any regulation containing prohibitions on pollutant discharges to include such regulations promulgated by the EPA. "Prohibited Discharge Standards" also includes discharges prohibited in § 6-956.

* * * * *

(13) "Slug Discharge" or "Slug load" means a discharge capable of violating the specific prohibited discharge provisions of § 6-956.

* * * * *

(14A) "WASA" means the District of Columbia Water and Sewer Authority, as established by Chapter 16B of Title 43.

* * * * *

(17) "Wastewater System Regulation Act" means this subchapter. (Jan. 25, 1986, D.C. Law 6-76, § 3, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 3, 33 DCR 577; May 8, 1998, D.C. Law 12-106, § 2(a), 45 DCR 1724; May 8, 1998, D.C. Law 12-106, § 2(a), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote (1) and (13); and added (1A), (1B), (3A), (5A), (7A), (7B), (10A), (10B), (14A), and (17).

Legislative history of Law 12-106. — Law 12-106, the "Wastewater System Regulation Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-299, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 6, 1998, and February 3, 1998, respectively. Signed by the Mayor on February 17, 1998, it was assigned Act No. 12-284 and transmitted to both Houses of Congress for its review. Law 12-106 became effective on May 8, 1998.

References in text. — "Section 307(b) and (c) of the Clean Water Act", referred to in (5A), is 33 U.S.C. § 1317.

§ 6-956. Regulation.

* * * * *

(b) All users shall comply with the following standards which set forth prohibited discharges:

(1) *General prohibitions.*

A user shall not introduce into the District's wastewater system any pollutant which causes pass through or interference. This general prohibition applies to any user introducing pollutants into the District's wastewater system whether or not the user is subject to National Pretreatment Standards or national, state or local pretreatment requirements;

(2) *Specific prohibitions.*

In addition, the following pollutants shall not be introduced into the District's wastewater system:

(A) Pollutants which create a fire or explosion hazard in the District's wastewater system, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using test methods specified in 40 CFR Chapter I, Subchapter N, Part 261.21. This prohibition includes any liquids, solids, or gases, which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to create fire or explosion or to injure in any other way the wastewater system or the process or operation and maintenance of the wastewater system. Prohibited materials under this section include, but are not limited to, gasoline, kerosene, naphtha, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(B) Pollutants which have any corrosive property capable of damaging or creating a hazard to structures, equipment, processes and personnel of the District's wastewater system, including, but not limited to, discharges with pH (that is, a base 10 logarithm of the reciprocal of the concentration of hydrogen ions stated in grams per liter) of less than 5, or greater than 10.

(C) Solid or viscous substances with a specific gravity greater than 2.50, or having any linear dimension greater than 1 inch, or which will or may cause, or contribute to obstruction of the flow in a sewer or otherwise interfere with the operation of the wastewater system including, but not limited to, grease, incompletely shredded garbage, animal remains, blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, spent grains, waste paper, wood, plastic, gas, tar, asphalt residue, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding, or polishing wastes.

(D) Any pollutant, including oxygen demanding pollutants, released in discharge at a flow rate, or concentration, or a combination of both, which causes interference with the District's wastewater system.

(E) Any wastewater with heat in such amounts as will inhibit the biological activity of processes in the District's wastewater system resulting in interference. In no case shall wastewater be discharged by a user in temperatures in excess of 140 degrees Fahrenheit or 60 degrees Centigrade, nor shall wastewater be discharged which causes individually or in combination with other wastewater, the influent at the District's wastewater treatment plant to have a temperature exceeding 104 degrees Fahrenheit or 40 degrees Centigrade.

(F) Any wastewater containing petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause pass through or interference.

(G) Any wastewater containing substances which may solidify or become viscous at temperatures above 32 degrees Fahrenheit or 0 degrees Centigrade.

(H) Any wastewater containing pollutants which result in the presence of toxic, noxious or malodorous liquids, solids or gases, which alone or in interaction with other wastes, are capable of creating a public nuisance or hazard to humans or animals, or are sufficient to inhibit access of District personnel to any part of the District's wastewater system, or cause interference or pass through.

(I) Any wastewater of objectionable color or tint not removed in the treatment process, including, but not limited to, dye wastes and vegetable tanning wastes.

(J) Any trucked or hauled pollutants, except at discharge points designated by WASA.

(c) All users shall comply with the National Pretreatment Standards and any national or local pretreatment requirement. All users shall comply with the National Categorical Pretreatment Standards in 40 CFR Chapter I, Subchapter N, Parts 405 through 471 and any amendments thereto. Should any national standard, requirement, or limitation conflict with a matter regulated by this act or its implementing regulations, the more stringent standard shall govern.

* * * * *

(f) Unless specifically authorized by WASA, no user shall discharge directly into a manhole or catch basin or similar opening in or into a sewer, any substance including, but not limited to, septic tank sludge, restaurant grease, waste or discharge from fuel service stations, or boat holding tank or portable toilet effluent.

(g) The installation of septic tanks and the installation or continuing use of earth pit privies shall be prohibited. Whenever replacement or significant repair to a septic tank or discharge piping is necessary, the user shall notify WASA, which shall determine if the tank should be discontinued and the wastewater conducted to the wastewater system.

* * * * *

(i) Provisions for storage of any substance in areas draining into a District sewer which, because of actual or potential discharge or leakage from the storage, creates or may create an explosion hazard in, or in any other way have a detrimental effect upon, the wastewater system, or otherwise constitute or pose a hazard to human beings, animals, property, or the receiving waters shall be subject to review by WASA, who shall require reasonable safeguards to eliminate or minimize the detrimental effect.

(j) All users shall notify WASA immediately of all discharges whether accidental or intentional, that violate these standards or that could otherwise cause problems in the District's wastewater system, including any slug load or slug discharges as defined in § 6-952. The notification shall include location of the discharge, type of waste, concentration, and volume, and corrective actions undertaken or to be undertaken by the user. Within 5 days following an accidental discharge, the user shall submit to WASA a detailed written report describing the cause of the discharge and the measures taken or to be taken by the user to prevent similar future occurrences. The notice shall not relieve the user of liability for any expense, loss, or damage which may be incurred or occasioned by damage to the wastewater system, injury to fish, or other damage to persons, property, or the environment caused by the user's act. Compliance with the provisions of this subsection shall not relieve the user of liability for any fines or penalties which may be imposed by this subchapter or other applicable law or regulation. Notices shall be permanently posted on the user's bulletin boards or other prominent places advising employees whom to notify in the event of an accidental discharge. Employers shall ensure that all employees who may cause or discover a discharge are advised of the emergency notification procedures.

* * * * *

(l) No user shall discharge pollutants into the District's wastewater system in excess of the limitations established and promulgated by WASA.

(m) All users shall notify WASA, the Mayor, the Director of EPA's Region III Waste Management Division, and the appropriate city and state hazardous waste authorities in the jurisdiction in which the discharge emanated, in writing, of any discharge into the District's wastewater system of a substance

which, if otherwise disposed of, would be a hazardous waste under applicable federal, state and municipal regulations. Such notification must include the name of the hazardous waste, the EPA hazardous waste number, and the type of discharge. (Jan. 25, 1986, D.C. Law 6-76, § 7, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 7, 33 DCR 577; May 8, 1998, D.C. Law 12-106, § 2(b), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote (b), (c), and (j); in (f) and (i), substituted "WASA" for "the Mayor"; in (g), substituted "WASA" for "the District"; and added (l) and (m).

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-957. Administration.

(a) WASA shall administer, implement and enforce the provisions of this subchapter and ensure compliance with this subchapter and with federal laws and regulations governing the issuance of permits for the discharge of wastewater into publicly owned treatment plants, through permits, contracts, orders, or other similar means. In the case of industrial users, WASA shall use permits or equivalent individual control mechanisms issued to each user. These permits, contracts, orders, or other similar means or individual control mechanisms shall comply with all applicable federal laws and regulations. WASA is authorized to set and collect fees and charges as may be necessary or appropriate to recoup costs associated with its responsibilities pursuant to this subchapter and pursuant to federal laws and regulations governing the issuance of permits for the discharge of wastewater into publicly owned treatment plants.

(b) WASA shall issue rules to implement the provisions of this subchapter under subchapter I of Chapter 15 of Title 1 and the rules shall include, but not be limited to:

(1) Regulations requiring users to submit information considered necessary by WASA to evaluate the user's actual or potential discharge status, including, but not limited to, description of facilities and plant processes, wastewater constituents and characteristics, discharge variations, and mechanical and plumbing plans and details;

(2) Regulations imposing conditions on users, including, but not limited to, limits on new or increased contributions of pollutants, changes in the nature of pollutants discharged, flow regulation or equalization, installation of sampling facilities and specifications for monitoring programs, and installation of pretreatment facilities;

(3) Regulations requiring the development of compliance schedules for the installation of technology required to comply with this subchapter;

(4) Regulations imposing fees to treat high strength wastes as may be defined by WASA;

(5) Regulations to effectively and safely dispose of wastes collected in portable collection systems, including, but not limited to, septic tank sludge, restaurant grease, and marine holding tank or portable toilet effluent;

(6) Regulations providing for the issuance and renewal of certificates of water and sewer availability;

(7) Regulations preventing tampering, other misuse, potential, or actual harm to the wastewater system; and

(8) Regulations imposing fees and charges for the issuance of wastewater pretreatment permits and the administration of the pretreatment program that reasonably and fairly meet the costs of the administration of the pretreatment program. (Jan. 25, 1986, D.C. Law 6-76, § 8, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 8, 33 DCR 577; Dec. 10, 1987, D.C. Law 7-54, § 2, 34 DCR 6895; Aug. 10, 1988, D.C. Law 7-138, § 2(a)-(d), 35 DCR 4779; May 8, 1998, D.C. Law 12-106, § 2(c), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote (a); and, in (b), substituted "WASA" for "the Mayor" throughout.

Legislative history of Law 12-106 — See note to § 6-952.

§ 6-958. Inspection authority.

In order to determine compliance with this subchapter or any rule issued pursuant to this subchapter, WASA and the Mayor shall have a right to enter upon or through any premises subject to this subchapter at reasonable times for the purpose of inspection, observation, measurement, sampling, and testing. The right to enter and inspect shall include the right to copy records related to compliance with this subchapter. Where a user has security measures in force which would require proper identification and clearance before entry, the user shall make necessary security arrangements so that, upon presentation of suitable identification, the Mayor or WASA will be permitted entry without delay. (Jan. 25, 1986, D.C. Law 6-76, § 9, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 9, 33 DCR 577; May 8, 1998, D.C. Law 12-106, § 2(d), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote the section.

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-959. Confidential information.

* * * * *

(b) When requested by the user in writing, information and data which might disclose trade secrets or secret processes shall not be made available for public inspection. However, the information and data shall be immediately available to the EPA for any purpose, and to WASA and the District in administrative and judicial review or enforcement proceedings to which the user is a party or in which the user has standing. Additionally, upon written request, WASA and the District may release such information and data to other government agencies in connection with uses related to this subchapter or to pretreatment programs.

* * * * *

(May 8, 1998, D.C. Law 12-106, § 2(e), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote (b).

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-960. Administrative enforcement.

(a) Whenever WASA has reason to believe that there is a violation of this subchapter or rules issued pursuant to this subchapter, it may initiate an administrative enforcement action pursuant to this section, and any rules issued pursuant to this subchapter. WASA may initiate this administrative enforcement action in addition to any other enforcement action, civil or criminal, which has or will be undertaken to enforce this subchapter, provided that no user shall be assessed both a civil and administrative penalty for the same violation.

(1) Whenever WASA has reason to believe that a user is violating this subchapter, or rules issued pursuant to this subchapter, it may issue a Notice of Infraction and Proposed Order. The Notice of Infraction shall include the following:

(A) The nature, time, and place of the violation (with reasonable specificity);

(B) The corrective or remedial action to be taken and any fines imposed or other amounts sought in accordance with this subchapter;

(C) The date upon which the Proposed Order shall become effective; and

(D) The procedure by which a person may answer a Notice of Infraction and Proposed Order and request a hearing, along with notification that failure to answer may lead to the adoption of some or all of the Proposed Order.

(2) The Proposed Order may direct the user to do the following:

(A) Eliminate the violation;

(B) Comply with the provisions of this subchapter;

(C) Take specific actions to avoid future violations;

(D) Pay fines, costs, or other amounts, as authorized by this subchapter; and

(E) A schedule for completion of any of the directives of the Proposed Order.

(3) The Proposed Order may provide for the suspension or revocation of any permit issued by the District or WASA pursuant to this subchapter, or the suspension or revocation of any contract or agreement between the user and the District or WASA, to the extent that such permit, contract, or agreement authorizes the person to discharge into the District's wastewater system.

(4) An answer to a Notice of Infraction and Proposed Order shall be in writing. In that answer a respondent shall admit or deny the allegations included in the Notice of Infraction. Regardless of whether the respondent admits or denies the allegations, the respondent may also assert in the answer that some or all of the terms of the Proposed Order should be modified.

(5) If a respondent, in an answer, denies any of the allegations in the Notice of Infraction, or asks that any term in the Proposed Order be modified, WASA shall conduct a hearing within 30 days of receiving the answer, unless that time period is extended in accordance with any regulations providing for such extensions. The hearing shall be conducted by a hearing examiner, who shall be an attorney regularly employed by WASA or an attorney retained by WASA on a contractual basis. The hearing examiner shall have the power to:

(A) Preside over hearings in matters arising under this subchapter;

(B) Determine whether any notice, order, or other document, was properly served upon any party to an enforcement action;

(C) Compel the attendance of witnesses by subpoena, administer oaths, and take testimony of witnesses under oath;

(D) Dismiss, rehear, and continue cases;

(E) Issue orders, including default orders, which require the respondent to provide evidence, submit pleadings, do some or all of the actions described in the Proposed Order, or to pay hearing and inspection costs, and to do any of the foregoing within specific time periods consistent with any regulations issued pursuant to this subchapter or to pay fines or penalties for the failure to do any of the foregoing; and

(F) Suspend permits or licenses issued pursuant to this subchapter for the purpose of enforcing the payment of monetary fines, penalties, or hearing and inspection costs.

(c) WASA shall issue regulations which establish a schedule of escalating fines which may be imposed by WASA as part of its effort to enforce this subchapter through administrative action, provided that these fines may not exceed the fines which may be imposed in a civil proceeding brought pursuant to this subchapter. WASA shall also issue regulations to implement this subchapter, including regulations to establish procedures for conducting administrative enforcement actions pursuant to subsection (a) of this section. These regulations shall include, but need not be limited to, procedures and, where applicable, deadlines, for:

(1) Effecting service of any notice, order or other document produced by a person or issued by WASA pursuant to this subsection; provided, however, that WASA shall bear the burden of establishing by a preponderance of the evidence that the Notice of Infraction was not defective, that the Notice of Infraction was properly served, and that an infraction occurred;

(2) Answering or otherwise responding to any notice, order, or other document issued pursuant to this subsection;

(3) Holding any hearing conducted pursuant to this subsection, provided however, that hearings shall be conducted in accordance with subchapter I of Chapter 15 of Title 1; and

(4) Issuing orders.

(d) The District of Columbia Board of Appeals and Review ('Board') shall entertain and determine appeals timely filed by WASA or by any person aggrieved by a final order of a hearing examiner issued pursuant to this subchapter. The Board shall make a determination of each appeal on the basis of the record established before the hearing examiner, and may affirm, reverse, or modify the order of the hearing examiner, or may remand the case for further proceedings before the hearing examiner subject to the qualifications set forth in this subsection. The Board shall set aside any hearing examiner order that is unsupported by a preponderance of the evidence on the record. The Board shall also set aside any hearing examiner order that was made without observance of procedure required by law or regulations, except that in such instances, the Board shall apply the rule of harmless error. The Board may not modify a sanction imposed by the hearing examiner if that sanction is within the limits established by law or regulation. (Jan. 25, 1986, D.C. Law 6-76, § 11, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 11, 33 DCR 577; May 8, 1998, D.C. Law 12-106, § 2(f), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote the section.

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-962. Emergency suspension of service.

(a)(1) In the event of an actual or threatened discharge to the District's wastewater system which, in the sole discretion of WASA, reasonably appears to present an imminent danger to the health or welfare of persons, WASA may, after informal notice to the discharger, suspend water service to any user who is or may be responsible for the discharge as is necessary to avoid or abate the danger. WASA is not required to conduct a hearing before taking such action.

(2) In the event of an actual or threatened discharge to the District's wastewater system which, in the sole discretion of WASA, reasonably appears to present an imminent danger to the environment or the operation or integrity of the District's wastewater system, WASA may, after providing notice and an opportunity to respond to the user, suspend water service to any user who is or may be responsible for the discharge as is necessary to avoid or abate the danger.

(3) Any notice or opportunity to respond to which WASA is required under the United States Constitution to provide to a user as a result of any action taken by WASA pursuant to subsection (a)(1) or (2) of this section, is not required to be provided or conducted pursuant to subchapter I of Chapter 15 of Title 1.

(b) The services shall be restored by WASA as soon as practicable after the emergency situation has been corrected.

(c) WASA's decision to suspend service may be appealed to the Board of Appeals and Review as set forth in § 6-960.

(d) An appeal of the WASA's decision shall not stay suspension of service. (Jan. 25, 1986, D.C. Law 6-76, § 13, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 13, 33 DCR 577; May 8, 1998, D.C. Law 12-106, § 2(g), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote (a); substituted "WASA" for "the Mayor" in (b); and substituted "WASA's decision" for "the Mayor's decision" in (c) and (d).

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-963. Annual publication.

(a) A list of the users in significant noncompliance with the Pretreatment Standards and Requirements in the preceding 12 months shall be published annually by WASA in the local daily newspaper with the largest circulation.

(b) The notification shall summarize the nature of the significant noncompliance and any enforcement action taken against the user during the same 12-month period.

(c) For the purposes of this section, a user is in significant noncompliance with the Pretreatment Standards and Requirements if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, are violations in which 66% or more of all the measurements taken during a 6-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(2) Technical Review Criteria ('TRC') violations, are violations in which 33% or more of all the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for Biochemical Oxygen Demand, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of pretreatment effluent limits (daily maximum or longer term average) that WASA determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of WASA or District personnel or the general public);

(4) Any violation of the terms of a wastewater discharge permit which remains uncorrected 45 days after notification of the violation is received by the user, or any failure to meet a compliance schedule milestone or enforcement order issued by WASA within 90 days after the scheduled date for achievement of the compliance schedule milestone;

(5) Failure to provide required reports, such as baseline monitoring reports, periodic self-monitoring reports, and reports on progress with compliance schedules or orders, within 30 days after the due date;

(6) Failure to timely and accurately report an instance of noncompliance with the Pretreatment Standards and Requirements;

(7) Any violation which results in WASA exercising its emergency authority pursuant to § 6-962; and

(8) Any violation WASA considers significant in light of the circumstances. (Jan. 25, 1986, D.C. Law 6-76, § 14, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 14, 33 DCR 577; Aug. 10, 1988, D.C. Law 7-138, § 2(e), (f), 35 DCR 4779; May 8, 1998, D.C. Law 12-106, § 2(h), 45 DCR 1731; May 8, 1998, D.C. Law 12-106, § 2(h), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote the section.

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-964. Penalties.

(a) Any person who violates any provision of this subchapter or the rules issued pursuant to this subchapter shall be liable for a civil fine not exceeding $10,000 for each day during which each violation continues, and shall be required to perform any other action needed to correct any harm caused by any violation or to ensure that future violations do not occur. All prosecutions under this provision shall be in the Superior Court of the District of Columbia in the name of the District of Columbia, and shall be instituted by the Corporation Counsel.

(b) Notwithstanding any other provision of this subchapter, any person who intentionally, willfully, or recklessly violates any provision of this subchapter or the rules issued pursuant to this subchapter shall be punished by a criminal fine not to exceed $10,000 for each day each violation continues, or imprisonment not to exceed one year for each day each violation continues, or both, and to perform any other action needed to correct any harm caused by any violation or to ensure that future violations do not occur. All prosecutions pursuant to this provision shall be in the Superior Court of the District of Columbia.

(c) Any person who violates any provision of this subchapter or the rules issued pursuant to this subchapter shall be liable to the District for all expenses, losses, or damages incurred by the District by reason of the violation. (Jan. 25, 1986, D.C. Law 6-76, § 15, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 15, 33 DCR 577; May 8, 1998, D.C. Law 12-106, § 2(i), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote (a) and (b).

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-965. Authority to issue regulations.

The Board of Directors of WASA is authorized to issue regulations consistent with the authority granted to it by this subchapter, in order to implement the provisions of this subchapter. (Mar. 12, 1986, D.C. Law 6-95, § 16, as added May 8, 1998, D.C. Law 12-106, § 2(j), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 added this section.

Legislative history of Law 12-106. — See note to § 6-952.

Subchapter VI. Environmental Impact Statements.

§ 6-981. Purpose.

Delegation of Authority Pursuant to D.C. Law 8-116, the "Asbestos Licensing and Control Act of 1990." — See Mayor's Order 98-51, April 15, 1998 (45 DCR 2697).

Delegation of Authority Pursuant to D.C. Law 8-36, the "District of Columbia Environmental Policy Act of 1989." — See Mayor's Order 98-86, May 29, 1998 (45 DCR 3980).

Cited in Tri-County Indus. v. District of Columbia, 932 F. Supp. 4 (D.D.C. 1996), aff'd, in part and vacated in part, Tri-County Indus. v. District of Columbia (D.C. Cir. 1997).

§ 6-982. Definitions.

Section references. — This section is referred to in § 6-3451.

§ 6-983. Environmental Impact Statement requirements.

Cited in United States v. Dudley, 104 F.3d 442 (D.C. Cir. 1997).

§ 6-986. Exemptions.

(a) No EIS shall be required by this subchapter with respect to an action:

* * * * *

(7) Within the Central Employment Area as defined in the Zoning Regulations of the District of Columbia;

(8) For which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989; or

(9) Granting an interim operating permit to an existing solid waste facility pursuant to § 6-3453.

* * * * *

(Feb. 27, 1996, D.C. Law 11-94, § 12, 42 DCR 7172; Apr. 9, 1997, D.C. Law 11-255, § 13, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-94 added (a)(9).

D.C. Law 11-255 validated previously made stylistic changes in (a)(7) and (8).

Temporary amendment of section.

D.C. Law 11-80 added (a)(9).

Section 17(b) of D.C. Law 11-80 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Solid Waste Facility Permit Act of 1995, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see § 12 of the Solid Waste Facility Permit Emergency Act of 1995 (D.C. Act 11-144, October 23, 1995, 42 DCR 6044).

Legislative history of Law 11-80. — Law 11-80, the "Solid Waste Facility Permit Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-456. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 22, 1995, it was assigned Act No. 11-156 and transmitted to both Houses of Congress for its review. D.C. Law 11-80 became effective on February 6, 1996.

Legislative history of Law 11-94. — Law 11-94, the "Solid Waste Facility Permit Act of 1995," was introduced in Council and assigned Bill No. 11-036, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-177 and transmitted to both Houses of Congress for its review. D.C. Law 11-94 became effective on February 27, 1996.

Legislative history of Law 11-255. — See note to § 6-906.

§ 6-989. Rules.

District of Columbia Environmental Policy Act Proposed Rulemaking Approval Resolution of 1994. — Pursuant to Proposed Resolution 11-25, deemed approved February 18, 1995, Council approved the proposed rulemaking adopting Chapter 72 (Environmental Policy Act Regulations) of Title 20, DCMR, issued pursuant to the "District of Columbia Environmental Policy Act of 1989."

§ 6-990.1. Required Environmental Impact Statements.

Notwithstanding any other provision of this subchapter, a full EIS shall be required for the construction of any new solid waste facility or the substantial modification of an existing structure presently used as, or intended to be used as, a solid waste facility, as the term "solid waste facility" is defined in Chapter 34 of Title 6, regardless of the cost of construction or modification. (Oct. 18, 1989, D.C. Law 8-36, § 11a, as added Apr. 29, 1998, D.C. Law 12-86, § 802, 45 DCR 1172.)

Effect of amendments. — D.C. Law 12-86 added this section.

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatroy Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committe on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 26, 1997, and December 19, 1997, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Subchapter VII. Asbestos Licensing and Control.

§ 6-991.1. Definitions.

Section references. — This section is referred to in § 47-2853.51.

Delegation of Authority Pursuant to D.C. Law 8-116, the "Asbestos Licensing and Control Act of 1990." — See Mayor's Order 98-51, April 15, 1998 (45 DCR 2697).

§ 6-991.2. Asbestos worker license.

(a) To obtain a license as an asbestos worker, a person shall establish to the satisfaction of the Board of Industrial Trades that the applicant has:

(1) Successfully completed a course of instruction on asbestos abatement that has been approved by the Board;

(2) Provided such additional evidence as the Board or the federal government has determined is necessary for the occupation of asbestos workers; and

(3) Complied with other standards required for licensure by the Non-Health Related Professions and Occupations Licensure Act of 1998.

* * * * *

(May 1, 1990, D.C. Law 8-116, § 3, 37 DCR 1641; Apr. 20, 1999, D.C. Law 12-261, § 1240, 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 rewrote (a).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

References in text. — "The Non-Health Related Professions and Occupations Licensure Act of 1998," referenced in (a)(3), is Title I of D.C. Law 12-261.

§ 6-991.3. Business entity license and permit.

* * * * *

(d) Any license issued pursuant to this section shall be issued as a Class A Environmental Materials endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (May 1, 1990, D.C. Law 8-116, § 4, 37 DCR 1641; Apr. 20, 1999, D.C. Law 12-261, § 2003(i), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (d).

Legislative history of Law 12-261. — See note to § 6-991.2.

§ 6-991.13. Rules.

* * * * *

(b) The proposed rules shall include, but not be limited to, the following:

* * * * *

(7) Appropriate exemption standards and alternative procedures for removal, including the use of resilient floor covering manufacturers' recommended work practices for the handling and removal of resilient floor covering materials;

* * * * *

(May 16, 1995, D.C. Law 10-255, § 9, 41 DCR 5193.)

Effect of amendments.

D.C. Law 10-255 validated a previously made change in (b)(7).

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

District of Columbia Asbestos Licensing and Contract Act of 1990 Proposed Rulemaking Approval Resolution of 1997. — Proposed Resolution 12-0112, the "District of Columbia Asbestos Licensing and Contract Act of 1990 Proposed Rulemaking Approval Resolution of 1997" was deemed approved, effective Jan. 25, 1997.

Editor's notes. — D.C. Act 10-302 which affected this section as set out in the 1995 Replacement Volume became Law 10-255, effective May 16, 1995. The historical citation and notes relating to D.C. Law 10-255 have been set out herein to clarify the law number and effective date of that act.

Subchapter VIII. Underground Storage Tank Management.

§ 6-995.1. Definitions.

Delegation of Authority Pursuant to D.C. Law 8-242, the "District of Columbia Underground Storage Tank Management Act of 1990." — See Mayor's Order 98-58, April 17, 1998 (45 DCR 2871).

"Owner." — Class of persons to be protected which was the entire population of the District of Columbia. Private individuals may utilize this Act's citizen suit provision to sue responsible parties to compel compliance with this Act and to abate any effects of petroleum releases, but not to collect money damages. Private individuals were allowed to sue property owners. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

Cited in 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

§ 6-995.2. Notification.

Cited in 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

§ 6-995.3. Release notification requirements.

Cited in 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

§ 6-995.9. Enforcement; penalties.

(a) If the Mayor believes or has reason to believe that there is a violation or a threatened violation of this subchapter or the rules issued pursuant to this subchapter, the Mayor may give written notice of the violation or threatened violation to the owner, operator, or any other responsible party deemed

appropriate by the Mayor, and may require the person to take the corrective measures the Mayor considers reasonable and necessary.

(1) Repealed.

* * * * *

(h) Any action under this section shall be in the Superior Court of the District of Columbia in the name of the District of Columbia, and shall be instituted by the Office of the Corporation Counsel.

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 12, 43 DCR 530; Apr. 20, 1999, D.C. Law 12-264, § 17, 46 DCR 2118.)

Effect of amendments.

D.C. Law 11-110 validated a previously made stylistic change in (h).

D.C. Law 12-264 validated a previously made technical correction.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 6-995.11. Citizen's right of action.

Who entitled to damage. — Under this section, private individuals can sue responsible parties to compel compliance with the Underground Storage Tank (UST) Act and to abate any effects of petroleum UST releases, but can not sue to collect money damages. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

Subchapter IX. Lead-Based Paint Abatement and Control.

§ 6-997.1. Definitions.

For the purposes of this subchapter, the term:

(1) "Abatement" means any set of measures designed, in accordance with standards established by the Mayor, to eliminate or reduce lead-based paint hazards; but, such measures exclude routine, ordinary, and common maintenance and repairs; such measures may include:

(A) The removal of lead-based paint and lead contaminated dust, the encapsulation, containment, enclosure, or covering of lead-based paint, the replacement or demolition of lead-painted structures, surfaces or fixtures, and the removal or covering of lead contaminated soil;

(B) All preparation, cleanup, disposal, transportation, testing, and post-abatement clearance testing associated with the activities described in subparagraph (A) of this paragraph; and

(C) Renovation, remodeling, repair, and landscaping activities on or around any structure built prior to 1978.

(2) "Accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible to a child under the age of 8 years.

(3) "Accredited training provider" means a training provider that has been approved by the Mayor to provide training for individuals who conduct lead-based paint activities.

(4) "Business entity" means a partnership, firm, company, association, corporation, sole proprietorship, government, quasi-government entity, non-profit organization, or other business concern that conducts lead-based paint activities.

(5) "Certified business entity or certified individual" means a business entity or individual who has met the requirements for conducting lead-based paint activities pursuant to this subchapter.

(6) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(7) "Impact surface" means an interior or exterior surface that is subject to peeling, chipping, chalking, cracking, or deterioration by repeated impacts.

(8) "Lead-based paint" means any paint or other surface coating containing lead or lead in its compounds in any quantity exceeding .5% of the total weight of the material or more than seven-tenths of a milligram per square centimeter (0.7 mg/cm^2), or in any quantity sufficient to constitute a health or environmental hazard.

(9)(A) "Lead-based paint activities" means the following:

(i) Identification, risk assessment, inspection, and abatement of lead-based paint, lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil; and

(ii) Planning, project designing, and supervision of any of the activities listed in sub-subparagraph (i) of this subparagraph.

(B) The term "lead-based paint activities" does not include routine, ordinary, and common maintenance and repairs.

(10) "Lead-based paint hazard" means any condition that causes or may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that could result in adverse human health effects as determined by the Mayor.

(11) "Lead-contaminated soil" means bare soil on real property that contains lead at, or in excess of, the levels determined by the Mayor to be hazardous to human health. (Apr. 9, 1997, D.C. Law 11-221, § 2, 43 DCR 6854; Apr. 20, 1999, D.C. Law 12-264, § 18, 46 DCR 2118.)

Section references. — This section is referred to in § 6-997.7.

Effect of amendments. — D.C. Law 12-264, in (9), validated a previously made technical correction.

Legislative history of Law 11-221. — Law 11-221, the "Lead-Based Paint Abatement and Control Act of 1996," was introduced in Council and assigned Bill No. 11-640, which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on October 1, 1996, and November 17, 1996, respectively. Signed by the Mayor on November 20, 1996, it was assigned Act No. 11-438 and transmitted to both Houses of Congress for its review. D.C. Law 11-221 became effective April 9, 1997.

Legislative history of Law 12-264. — See note to § 6-995.9.

Delegation of Authority Pursuant to D.C. Law 11-221, "Lead-Based Paint Abatement and Control Act of 1996." — See Mayor's Order 98-54, April 15, 1998 (45 DCR 2702); Mayor's Order 98-124, August 7, 1998 (45 DCR 6386).

§ 6-997.2. Establishment of lead-based paint abatement and control program.

The Mayor shall establish a program for the reduction, elimination, and abatement of lead-based paint hazards in the District pursuant to the provisions of this subchapter that will meet federal requirements, to include:

(1) Development of standards and procedures for conducting lead-based paint activities;

(2) Community outreach and education; and

(3) Other functions to implement this subchapter as determined by the Mayor. (Apr. 9, 1997, D.C. Law 11-221, § 3, 43 DCR 6854.)

Legislative history of Law 11-221. — See note to § 6-997.1.

Delegation of Authority Pursuant to D.C. Law 11-221 the "Lead-Based Paint Abatement and Control Act of 1996." — See Mayor's Order 97-118, June 25, 1997 (44 DCR 4137).

§ 6-997.3. Prohibition on lead-based paint activities.

(a) A business entity or individual shall not do any of the following in violation of the provisions of this subchapter or rules promulgated pursuant to this subchapter:

(1) Conduct a lead-based paint activity;

(2) Undertake a lead-based paint abatement project; or

(3) Provide training to others who conduct lead-based paint activities.

(b) An individual shall not apply a lead-based paint or glaze to any surface including, but not limited to:

(1) The interior and exterior surfaces of:

(A) Any residential, public, or commercial building, bridge, or other structure or superstructure; or

(B) Any fixture, household appliance, cooking, drinking, or eating utensil, furniture, or toy or other article intended for use by children; or

(2) Any paved surface.

(c) A business entity or individual shall not sell, offer for sale, deliver, transfer, or possess with intent to sell, deliver, or transfer any fixture, household appliance, cooking, drinking, or eating utensil, furniture, or toy or other article intended for use by children to which a lead-based paint or glaze has been applied. (Apr. 9, 1997, D.C. Law 11-221, § 4, 43 DCR 6854.)

Section references. — This section is referred to in § 6-997.12.

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.4. Exemptions from the provisions of this subchapter.

The following are exempt from the provisions of this subchapter:

(1) Individuals who perform lead-based paint activities at residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family; unless any child under the age of 8 years resides, is expected to reside in, or regularly visits such housing;

(2) Housing for the elderly or persons with disabilities; unless any child under the age of 8 years resides, is expected to reside in, or regularly visits such housing;

(3) Any (0)-bedroom unit, such as an efficiency apartment; and

(4) Housing built after 1978. (Apr. 9 1997, D.C. Law 11-221, § 5, 43 DCR 6854.)

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.5. Certification requirements for individuals and business entities.

(a) An individual shall be certified by the Mayor or possess certification provided by a training program that has been formally accredited either by EPA or by an EPA-approved state program prior to conducting a lead-based paint activity in the District. To obtain certification from the Mayor, an individual shall:

(1) Submit proof to the Mayor that he or she has successfully completed an accredited training course and any required accredited review course;

(2) Pass an examination required by the Mayor; and

(3) Meet or exceed any additional requirements set by the Mayor.

(b) A business entity shall be certified by the Mayor prior to conducting a lead-based paint activity or project in the District. To obtain certification, a business entity shall demonstrate to the satisfaction of the Mayor the following:

(1) That all its employees and subcontractors conducting lead-based paint activities are certified pursuant to this subchapter;

(2) That the business entity and its employees and subcontractors will conduct lead-based paint activities in accordance with all applicable federal and District environmental, occupational safety, and health laws, regulations, and rules;

(3) That the business entity and its employees and subcontractors will comply with all applicable federal and District laws, regulations, and rules governing the disposal of all waste containing lead; and

(4) Any additional requirements set by the Mayor necessary to implement this subchapter.

(c) The Mayor shall establish criteria, procedures, and fees for reciprocity of certification.

(d) All certificates issued to business entities shall expire 12 months from the date of certification. All certificates issued to individuals shall expire 24 months from the date of certification.

(e) Individuals and business entities seeking certification and certification renewal in the District shall pay a reasonable fee set by the Mayor. The Mayor shall, by rulemaking, revise the certification and certification renewal fees as necessary to cover the administrative costs associated with the issuance of certificates. (Apr. 9, 1997, D.C. Law 11-221, § 6, 43 DCR 6854.)

Section references. — This section is referred to in §§ 6-997.7, 6-997.10, and 6-997.12.

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.6. Accreditation of training providers.

(a) A training provider shall be accredited separately for each training course or review course offered by that training provider. To receive accreditation, a training provider shall:

(1) Submit an application to the Mayor for approval, or provide proof of accreditation by EPA, or a state EPA-approved accredited training provider; the application shall contain the following information:

(A) Qualifications of all training managers and instructors;

(B) Copies of all instructor and student course materials for each course offered;

(C) A description of the facilities and equipment available for lecture and hands-on training; and

(D) Any other information determined by the Mayor to be necessary for approval of an application for accreditation; and

(2) Pay a reasonable fee with each application, except that fees shall not be imposed on any District government or nonprofit training program; the Mayor may by rulemaking revise the application fees as necessary to cover the administrative costs associated with accreditation and accreditation renewal.

(b) Accreditation by the Mayor shall expire 12 months from the date of accreditation. (Apr. 9, 1997, D.C. Law 11-221, § 7, 43 DCR 6854.)

Section references. — This section is referred to in §§ 6-997.10 and 6-997.12.

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.7. Permit requirements.

(a) Prior to conducting a lead-based paint abatement as defined in § 6-997.1(1)(A), business entities and individuals, except governmental agencies, shall obtain a permit from the Mayor. To obtain a permit, an application shall be submitted to the Mayor for approval with the appropriate fee. The application shall contain the following information:

(1) The location of the lead-based paint abatement project;

(2) The starting and completion dates of the lead-based paint activity;

(3) The approximate amount of lead-based paint or lead-based paint containing materials to be abated;

(4) The method of abatement to be employed;

(5) The provisions for medical surveillance and worker protection;

(6) The manner in which the waste containing lead will be disposed and location of the disposal site;

(7) A description of the areas immediately adjacent to the abatement site;

(8) Proof of certification, pursuant to § 6-997.5, of the business entity and of all individuals who will be engaging in the lead-based paint abatement; and

(9) Any other information required by the Mayor.

(b) A permit fee determined by the Mayor shall be assessed for each lead-based paint abatement project. The Mayor may by rulemaking revise permit fees as necessary to recover the costs of administering and enforcing this subchapter. Permits shall be valid for a period not to exceed one year from the date of issuance. Each permit shall be limited to one site and shall not be transferable to another site. (Apr. 9, 1997, D.C. Law 11-221, § 8, 43 DCR 6854.)

Section references. — This section is referred to in §§ 6-997.10 and 6-997.12.

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.8. Record keeping requirements.

(a) Business entities and individuals conducting lead-based paint activities shall:

(1) Keep a record of all lead-based paint activities performed; and

(2) Make that record available to the Mayor upon reasonable request.

(b) The records required by this section shall be kept for a minimum of 3 years.

(c) The records required by this section shall include:

(1) The address or location of each lead-based paint activity;

(2) The name and address of the individual who supervised the lead-based paint activity;

(3) A description of the lead-based paint activity and the amount of lead-based paint, if any, that was abated;

(4) The starting and completion dates of the lead-based paint activity;

(5) A summary of the procedures that were used to comply with all applicable standards;

(6) The name and address of each disposal site where the waste containing lead is deposited; and

(7) Any other information that the Mayor requires. (Apr. 9, 1997, D.C. Law 11-221, § 9, 43 DCR 6854.)

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.9. Inspections by the Mayor.

(a) The Mayor shall have the right to randomly and periodically inspect any and all lead-based paint activities in the District, and all pertinent records, documents, or data compilations, for the purpose of ensuring compliance with this subchapter. Inspections may take place at any reasonable time upon the presentation of appropriate credentials.

(b) If, upon inspection, the Mayor has reason to believe that (i) there has been a violation of this subchapter or of the rules and regulations issued pursuant to this subchapter, or (ii) a threat exists to human health, the public welfare, or the environment, the Mayor may:

(1) Give written notice of the alleged violation or threat to the party responsible and order the party to take such corrective measures as the Mayor determines reasonable and necessary;

(2) Issue a cease and desist order;

(3) Impose civil or criminal fines and penalties in accordance with §§ 6-997.12 and 6-997.13; or

(4) Request the Corporation Counsel to commence appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief.

(c) If the Mayor is denied access to conduct an inspection in accordance with this section, the Mayor may apply to the Superior Court of the District of

Columbia for a search warrant. Denial of access to conduct an inspection is an offense punishable pursuant to § 6-997.13. (Apr. 9, 1997, D.C. Law 11-221, § 10, 43 DCR 6854.)

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.10. Denial, suspension, or revocation.

The Mayor may, after notice and opportunity for hearing, suspend, revoke, modify, or refuse to issue, renew, or restore a certificate, permit, or accreditation issued under § 6-997.5, § 6-997.6, or § 6-997.7 to protect the public health, safety, or welfare, if the Mayor finds that the applicant or holder has:

(1) Failed to comply with any provision of this subchapter or rule issued pursuant to this subchapter;

(2) Misrepresented facts relating to a lead-based paint activity to a client or customer;

(3) Made a false statement or misrepresentation material to the issuance, modification, or renewal of a certificate, permit, or accreditation;

(4) Submitted a false or fraudulent record, invoice, or report;

(5) As a training provider, or as an instructor, provided inaccurate information or inadequate training;

(6) Had a history of repeated violations; or

(7) Had a certificate, permit, or accreditation denied, revoked, or suspended in another state or jurisdiction. (Apr. 9, 1997, D.C. Law 11-221, § 11, 43 DCR 6854.)

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.11. Hearings.

Any party adversely affected by an action taken pursuant to the provisions of this subchapter, or the rules or regulations promulgated pursuant to this subchapter, is entitled to a hearing before the Mayor upon filing with the Mayor, within 15 days from the date of such action, a written request for a hearing. Such hearing shall be held in accordance with § 1-1509. (Apr. 9, 1997, D.C. Law 11-221, § 12, 43 DCR 6854.)

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.12. Criminal penalties/fines.

(a) Notwithstanding any other provision of this subchapter, any violation of § 6-997.3, § 6-997.5, § 6-997.6, or § 6-997.7, or the implementing rules and regulations shall be punishable by a fine not to exceed $1000 for the first offense, or $5,000 for any subsequent offense, imprisonment not to exceed 6 months, or both.

(b) Each day of each violation shall constitute a separate offense, and the penalties described shall be applicable to each of the separate offenses.

(c) All prosecutions under this section shall be in the Superior Court of the District of Columbia in the name of the District of Columbia and shall be instituted by the Corporation Counsel. (Apr. 9, 1997, D.C. Law 11-221, § 13, 43 DCR 6854.)

Section references. — This section is referred to in § 6-997.9.

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.13. Civil penalties/fines; civil infractions.

(a) Any violation of this subchapter is punishable by a fine not to exceed $500 for each day of each violation.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter or the rules issued under authority of Chapter 27 of this title. Adjudication of any infractions shall be pursuant to Chapter 27 of this title. (Apr. 9, 1997, D.C. Law 11-221, § 14, 43 DCR 6854.)

Section references. — This section is referred to in § 6-997.9.

Legislative history of Law 11-221. — See note to § 6-997.1.

§ 6-997.14. Rulemaking.

The Mayor shall issue rules and regulations to implement the provisions of this subchapter, in accordance with subchapter I of Chapter 15 of Title 1. (Apr. 9, 1997, D.C. Law 11-221, § 15, 43 DCR 6854.)

Legislative history of Law 11-221. — See note to § 6-997.1.

CHAPTER 10. ANIMAL CONTROL.

Sec.
6-1004. Licenses and fees.

§ 6-1004. Licenses and fees.

* * * * *

(d) The Mayor shall collect the fees and issue the licenses as provided in this section. The Mayor shall promulgate regulations to allow veterinarians to collect license fees and issue licenses. The regulations shall permit veterinarians to collect an additional $2 for each license issued as reimbursement for administrative costs.

* * * * *

(h) Any license issued pursuant to this section shall be issued by the Department of Health. (1973 Ed., § 6-2404; Oct. 18, 1979, D.C. Law 3-30, § 5, 26 DCR 765; Mar. 17, 1993, D.C. Law 9-236, § 2(a), 40 DCR 614; Sept. 26, 1995, D.C. Law 11-52, § 101, 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-261, § 2004, 46 DCR 3142.)

Effect of amendments.

D.C. Law 11-52 added the last two sentences in (d).

D.C. Law 12-261 added (h).

Emergency act amendments.

For temporary amendment of section, see § 101 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

§ 6-1008. Prohibited conduct.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

§ 6-1011. Penalty.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

CHAPTER 10A. DANGEROUS DOGS.

§ 6-1021.1. Definitions.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Pit Bull and Rottweiler Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-257, April 16, 1996, 43 DCR 2156).

For temporary amendment of section, see § 3(a) of the Dangerous Dog Designation Emergency amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

§ 6-1021.2. Determination of a dangerous dog.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Pit Bull and Rottweiler Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-257, April 16, 1996, 43 DCR 2156).

For temporary amendment of section, see § 3(b) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

For temporary addition of a § 6-1021.2a, see § 2(c) of the Pit Bull and Rottweiler Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-257, April 16, 1996, 43 DCR 2156).

For temporary addition of a § 6-1021.2a, see § 3(c) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

§ 6-1021.3. Consequences of a dangerous dog determination.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the Pit Bull and Rottweiler Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-257, April 16, 1996, 43 DCR 2156).

For temporary amendment of section, see

§ 3(d) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

§ 6-1021.4. Dangerous dog registration requirements.

Emergency act amendments. — For temporary addition of a § 6-1021.4a, see § 2(e) of the Pit Bull and Rottweiler Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-257, April 16, 1996, 43 DCR 2156).

For temporary amendment of section, see § 3(e) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

For temporary addition of a § 6-1024.4a, see § 3(f) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

§ 6-1021.6. Penalties.

Emergency act amendments. — For temporary amendment of section, see § 2(f) of the Pit Bull and Rottweiler Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-257, April 16, 1996, 43 DCR 2156).

For temporary amendment of section, see § 3(g) of the Dangerous Dog Designation Emergency Amendment Act of 1996 (D.C. Act 11-351, August 12, 1996, 43 DCR 4553).

CHAPTER 10B. REGULATION OF HORSE-DRAWN CARRIAGE TRADE.

Sec.
6-1032. Horse-drawn carriage trade regulation.

§ 6-1032. Horse-drawn carriage trade regulation.

* * * * *

(g) Any license issued pursuant to this section shall be issued as a Class A Inspected Sales and Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Mar. 7, 1991, D.C. Law 8-224, § 3, 38 DCR 207; Apr. 20, 1999, D.C. Law 12-261, § 2003(j), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (g).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

CHAPTER 12. REPORTS OF CANCER AND MALIGNANT NEOPLASTIC DISEASES.

§ 6-1201. Mayor to issue rules.

Delegation of Authority Pursuant to the "Preventive Health Services Amendment Act of 1985." — See Mayor's Order 98-141, August 20, 1998 (45 DCR 6588).

CHAPTER 15. PUBLIC EMERGENCIES.

Subchapter II. Nuclear Weapons Freeze.

Sec.
6-1512, 6-1513. [Repealed].

Subchapter II. Nuclear Weapons Freeze.

§ 6-1512. Establishment of Advisory Board.

Repealed.

(Mar. 17, 1983, D.C. Law 4-210, § 3, 30 DCR 1088; Apr. 29, 1998, D.C. Law 12-86, § 401(g), 45 DCR 1172.)

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 6-1513. Duties of Advisory Board.

Repealed.

(Mar. 17, 1983, D.C. Law 4-210, § 4, 30 DCR 1088; Apr. 29, 1998, D.C. Law 12-86, § 401(g), 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 6-1512.

CHAPTER 19. RIGHTS OF MENTALLY RETARDED CITIZENS.

Subchapter I. Statement of Purpose; Definitions.

Sec.
6-1901. Statement of purpose.
6-1902. Definitions.

Subchapter II. Determination of Need for Mental Retardation Facilities and Services in the District

6-1911. [Repealed].

Subchapter III. Admission, Commitment, Discharge, Transfer, Respite Care.

6-1922. Voluntary admission.
6-1924. Petition for commitment of individual 14 years of age or older filed by parent or guardian.
6-1926. Petition for commitment of individual under 14 years of age filed by parent or guardian.
6-1928. Discharge from commitment upon request by parent or guardian.
6-1929. Transfer of customer from one facility to another.
6-1931. Payment for habilitation and care.

Subchapter IV. Hearing and Review Procedures.

6-1944. Payment for independent comprehensive evaluation and habilitation plan.
6-1949. Disposition orders by Court.
6-1951. Periodic review of commitment order.

Subchapter V. Rights of Mentally Retarded Persons.

6-1961. Habilitation and care; habilitation program.
6-1962. Living conditions; teaching of skills.
6-1963. Least restrictive conditions.
6-1964. Comprehensive evaluation and individual habilitation plan.
6-1965. Visitors; mail; access to telephones;

Subchapter I. Statement of Purpose; Definitions.

§ 6-1901. Statement of purpose.

(a) It is the intent of the Council of the District of Columbia to:

(1) Assure that residents of the District of Columbia with mental retardation shall have all the civil and legal rights enjoyed by all other citizens of the District of Columbia and the United States;

(2) Secure for each resident of the District of Columbia with mental retardation, regardless of ability to pay, such habilitation as will be suited to the needs of the person, and to assure that such habilitation is skillfully and humanely provided with full respect for the person's dignity and personal integrity and in a setting least restrictive of personal liberty;

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 506(a), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52, in (a)(1), substituted "residents of the District of Columbia with mental retardation" for "mentally retarded persons"; and, in (a)(2), substituted "resident of the District of Columbia with mental retardation" for "person who may be mentally retarded."

Emergency act amendments.

For temporary amendment of section, see § 506(a) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

§ 6-1902. Definitions.

As used in this chapter:

* * * * *

(3) "Chief Program Director" means an individual with special training and experience in the diagnosis and habilitation of mentally retarded persons, and who is a Qualified Mental Retardation Professional appointed or designated by the Director of a facility for mentally retarded persons to provide or supervise habilitation and care for customers of the facility.

* * * * *

(5A) "Competent" means to have the mental capacity to appreciate the nature and implications of a decision to enter a facility, choose between or among alternatives presented, and communicate the choice in an unambiguous manner.

(6) "Comprehensive evaluation" means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons with mental retardation, which includes a sequence of observations and examinations intended to determine the person's strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include, but not be limited to, a physical examination that includes the person's medical history; an educational evaluation, vocational evaluation, or both; a psychological evaluation, including an evaluation of cognitive and adaptive functioning levels; a social evaluation; and a dental examination.

* * * * *

(8A) "Customer" means a person admitted to or committed to a facility pursuant to subchapter III of this chapter for habilitation or care.

* * * * *

(22) "Resident of the District of Columbia" means a person who maintains his or her principal place of abode in the District of Columbia, including a person with mental retardation who would be a resident of the District of Columbia if the person had not been placed in an out-of-state facility by the District. A person with mental retardation who is under 21 years of age shall be deemed to be a resident of the District of Columbia if the custodial parent of the person with mental retardation is a resident of the District of Columbia.

* * * * *

(24A) "Screening" means an assessment of a person with mental retardation in accordance with standards issued by the Accreditation Council for Services for People with Developmental Disabilities, which is designed to determine if a further evaluation of the person with mental retardation or other interventions are indicated.

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 506(b), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customers" for "residents" near the end of (3); inserted (5A), (8A), and (24A); and rewrote (6) and (22).

Emergency act amendments.

For temporary amendment of section, see § 506(b) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

Two-prong test to determine whether individual is "at least mentally retarded." — This chapter prescribes a two prong test to determine whether an individual is at least moderately mentally retarded. The individual must be at least moderately mentally retarded cognitively and at least moderately mentally retarded adaptively. In re Jones, 123 WLR 1917 (Super. Ct. 1995).

Subchapter II. Determination of Need for Mental Retardation Facilities and Services in the District.

§ 6-1911. Determination of need for mental retardation facilities and services in the District.

Repealed.

(1973 Ed., § 6-1653; Mar. 3, 1979, D.C. Law 2-137, § 201, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506 (c), 42 DCR 3684.)

Emergency act amendments. — For temporary repeal of section, see § 506(c) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

Subchapter III. Admission, Commitment, Discharge, Transfer, Respite Care.

§ 6-1921. Competence of individual to refuse commitment.

Appellate review. — Appellate court will overturn a trial court's determination of competency only where the evidence is such that, as a matter of law, a trier of fact would be compelled to find beyond a reasonable doubt that the individual was incompetent. In re Moses, App. D.C., 659 A.2d 829 (1995).

In the absence of evidence to the contrary, the appellate courts presumes that the trial judge understood and applied the correct standard. In re Moses, App. D.C., 659 A.2d 829 (1995).

§ 6-1922. Voluntary admission.

* * * * *

(b) Within 10 days of the admission, the Director shall notify the Court of the admission and shall certify to the Court that a comprehensive evaluation shall be conducted and an individual habilitation plan developed within 30 days of the admission.

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 506(d), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52, in (b), substituted "10 days" for "3 days" near the beginning and substituted "30 days" for "10 days" near the end.

Emergency act amendments.

For temporary amendment of section, see § 506(d) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

Test to determine if person is at least moderately mentally retarded. — This chapter prescribes a two prong test to determine whether an individual is at least moderately mentally retarded. The individual must be at least moderately mentally retarded cognitively and at least moderately mentally retarded adaptively. In re Jones, 123 WLR 1917 (Super. Ct. 1995).

Cited in In re Moses, App. D.C., 659 A.2d 829 (1995).

§ 6-1923. Application by individual for out-patient non-residential habilitation.

Cited in In re Moses, App. D.C., 659 A.2d 829 (1995).

§ 6-1924. Petition for commitment of individual 14 years of age or older filed by parent or guardian.

* * * * *

(b) If the Court determines that the individual is not competent to refuse commitment, the Court shall determine whether to order the commitment. The Court shall order the commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed within one year prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 506(e), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "1 year" for "6 months" in (b)(1).

Emergency act amendments.

For temporary amendment of section, see § 506(e) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

Test to determine whether person is at least moderately retarded. — This chapter prescribes a two prong test to determine whether an individual is at least moderately mentally retarded. The individual must be at least moderately mentally retarded cognitively and at least moderately mentally retarded adaptively. In re Jones, 123 WLR 1917 (Super. Ct. 1995).

Evidence insufficient to find person "at least moderately mentally retarded." — Evidence insufficient to find beyond a reasonable doubt, as required by this, that the respondent was "at least moderately mentally retarded." In re Jones, 123 WLR 1917 (Super. Ct. 1995).

§ 6-1926. Petition for commitment of individual under 14 years of age filed by parent or guardian.

(a) A parent or guardian may file a written petition with the Court to have an individual under 14 years of age who is or is believed to be mentally retarded committed to a facility. The Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter to determine whether the Court shall order the commitment. The Court shall order such commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed within one year prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 506(f), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "1 year" for "6 months" in (a)(1).

Emergency act amendments.

For temporary amendment of section, see § 506(f) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1928. Discharge from commitment upon request by parent or guardian.

Customers committed pursuant to § 6-1924 or § 6-1926 shall be discharged if the parent or guardian who petitioned for the commitment requests the customer's release in writing to the Court and the Court determines, based on consultation with the customer, his or her counsel and the customer's mental retardation advocate, if one has been appointed, that the customer consents to such release. Such customers also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their 14th birthday. A hearing may be conducted pursuant to provisions of subchapter IV of this chapter to determine the question of competence. (1973 Ed., § 6-1661; Mar. 3, 1979, D.C. Law 2-137, § 308, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(g), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer" for "resident", "customers" for "residents", and "customer's" for "resident's" throughout this section.

Emergency act amendments.

For temporary amendment of section, see § 402(a) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(g) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1929. Transfer of customer from one facility to another.

(a) The Department of Human Services of a facility may recommend to the Court that a customer committed to the facility be transferred to another facility if the Department of Human Services determines that it would be beneficial and consistent with the habilitation needs of the customer to do so. Notice of the recommendation shall be served on the customer, the customer's counsel, the customer's parent or guardian who petitioned for the commitment and the customer's mental retardation advocate, if one has been appointed. If the proposed transfer is determined by the Court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the customer or his or her parent or guardian requests a hearing by petitioning the Court in writing within 10 days of being notified by the Court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding whether to authorize the transfer, the Court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. Due consideration shall be given to the relationship of the customer to his or her family, guardian or friends so as to maintain relationships and encourage visits beneficial to the relationship.

(b) A customer admitted to a facility can be transferred to another facility if the customer consents to the transfer.

(c) Nothing in this section shall be construed to prohibit transfer of a customer to a health care facility without prior Court approval in an emergency situation when the life of the customer is in danger. In such circumstances, consent of the customer, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the customer cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Department of Human Services, with notice promptly given to the parent or guardian. (1973 Ed., § 6-1662; Mar. 3, 1979, D.C. Law 2-137, § 309, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(h), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 14(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-52 substituted "customer" for "resident" and "customer's" for "resident's" throughout this section; in the first sentence of (a), substituted "Department of Human Services" for "Director of a facility" and for "Director"; and substituted "Department of Human Services" for "Director of the facility" in the third sentence of (c).

D.C. Law 11-255 validated previously made technical and stylistic changes in the first sentence in (a).

Emergency act amendments.

For temporary amendment of section, see § 506(h) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 6-1931. Payment for habilitation and care.

(a) A person with mental retardation, or the father, mother, spouse, or adult child of a person with mental retardation, who receives habilitation, care, or both from the District pursuant to this chapter, shall pay to the District the costs of habilitation, care, or both received by the person with mental retardation if the person with mental retardation, or the father, mother, spouse, or adult child of the person with mental retardation, or the estate of the person with mental retardation is able to pay the costs of habilitation, care, or both received.

(b) If any person made liable by subsection (a) of this section does not pay the costs of habilitation, care, or both received by the person with mental retardation, the court shall issue to the liable person a citation to show cause why that person should not be adjudged to pay a portion or all of the expenses of habilitation, care, or both of the person with mental retardation. The citation shall be served at least 10 days before the show cause hearing. If, upon the hearing, it appears to the court that the person made liable by subsection (a) of this section does not have sufficient resources to pay the full costs of habilitation, care, or both received by the person with mental retardation, the court may order the payment of a reasonable amount of the costs of habilitation, care, or both received based on the liable person's resources. The court may order the liable person to make payments quarterly, monthly, or at any other interval deemed appropriate by the court. The order may be enforced

against any property of the liable person as if the order were an order for temporary alimony in a divorce case.

(c) The Mayor may examine, under oath, the father, mother, spouse, adult child, and the executor of the estate of the person with mental retardation who receives habilitation, care, or both if the person lives in the District of Columbia, to ascertain the person's ability, or the ability of the estate, to pay the full costs or contribute to the costs of habilitation, care, or both of the person with mental retardation. (1973 Ed., § 6-1664; Mar. 3, 1979, D.C. Law 2-137, § 311, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(i), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 rewrote this section.

Temporary amendment of section. — D.C. Law 11-29 rewrote this section.

Emergency act amendments.

For temporary amendment of section, see § 4(a) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(a) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(i) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — Law 11-29, the "Human Services Reduction Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-209. The Bill was adopted on first and second readings on April 4, 1995, and May 2, 1995, respectively. Signed by the Mayor on May 26, 1995, it was assigned Act No. 11-59 and transmitted to both Houses of Congress for its review. D.C. Law 11-29 became effective on July 25, 1995.

Legislative history of Law 11-52. — See note to § 6-1901.

Subchapter IV. Hearing and Review Procedures.

§ 6-1942. Representation by counsel.

Cited in In re Jones, 123 WLR 1917 (Super. Ct. 1995).

§ 6-1943. Comprehensive evaluation report and individual habilitation plan required; contents; copies.

Cited in In re Jones, 123 WLR 1917 (Super. Ct. 1995).

§ 6-1944. Payment for independent comprehensive evaluation and habilitation plan.

If the respondent demonstrates that a comprehensive evaluation of a person with mental retardation failed to comply substantially with accepted professional standards and that sound professional judgement was not exercised in the performance of the evaluation, the court, upon a motion of the respondent, may order an independent comprehensive evaluation of the person or an individual habilitation plan at the District's expense if the person is unable to pay. (1973 Ed., § 6-1671; Mar. 3, 1979, D.C. Law 2-137, § 404, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(j), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 rewrote this section.

Temporary amendment of section. — D.C. Law 11-29 rewrote this section.

Emergency act amendments. — For temporary amendment of section, see § 4(b) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(b) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(j) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1947. Standard of proof.

Standard of review. — Appellate court will overturn a trial court's determination of competency only where the evidence is such that, as a matter of law, a trier of fact would be compelled to find beyond a reasonable doubt that the individual was incompetent. In re Moses, App. D.C., 659 A.2d 829 (1995).

In the absence of evidence to the contrary, the appellate courts presume that the trial judge understood and applied the correct standard. In re Moses, App. D.C., 659 A.2d 829 (1995).

§ 6-1949. Disposition orders by Court.

(a) Upon completion of the hearing, the Court shall order that a respondent shall not be committed to a facility if the Court finds that:

(1) The respondent is not at least moderately mentally retarded;

(2) A respondent 14 years of age or older is competent to refuse commitment; or

(3) The respondent is not a resident of the District of Columbia.

* * * * *

(c) If the Court determines that a respondent should not be committed to a facility, the Court may order that the respondent undergo such nonresidential habilitation and care as may be appropriate, necessary, and available, or it may order no habilitation and care.

* * * * *

(July 25, 1995, D.C. Law 11-29, § 4(c), 42 DCR 2950; Sept. 26, 1995, D.C. Law 11-52, § 506(k), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 added (a)(3); and substituted "appropriate, necessary, and available" for "appropriate and necessary" in (c).

Temporary amendment of section. — D.C. Law 11-29 substituted "appropriate, necessary, and available" for "appropriate and necessary" in (c).

Emergency act amendments.

For temporary amendment of section, see § 4(c) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(c) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(k) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

Cited in In re Jones, 123 WLR 1917 (Super. Ct. 1995).

§ 6-1950. Appeal of commitment order.

Guardian ad litem. — A guardian ad litem in mental retardation commitment proceedings has standing to appeal an order denying commitment. In re Moses, App. D.C., 659 A.2d 829 (1995).

§ 6-1951. Periodic review of commitment order.

(a) Any decision of the Court ordering commitment of a mentally retarded person to a facility shall be reviewed in a Court hearing annually. The mentally retarded individual shall be discharged unless there is a finding of the following:

(1) The Court determines that the mentally retarded individual has benefited from the habilitation;

(2) The facility, its sponsoring agency, or the Department of Human Services demonstrates that continued residential habilitation is necessary for the habilitation program;

(3) The person with mental retardation is a resident of the District of Columbia; and

(4) The person meets the requirements for commitment in §§ 6-1924(b) and 6-1926(a).

* * * * *

(July 25, 1995, D.C. Law 11-29, § 4(d), 42 DCR 2950; Sept. 26, 1995, D.C. Law 11-52, § 506(l), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 14(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-52, in (a), substituted "annually" for "every 6 months for 2 years, and once a year thereafter" in the first sentence of the introductory language; and added (3) and (4).

D.C. Law 11-255 validated a previously made technical correction in (a)(4).

Temporary amendment of section. — D.C. Law 11-29 added (a)(3).

Emergency act amendments.

For temporary amendment of section, see § 4(d) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(d) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(b) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(l) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

Legislative history of Law 11-255. — See note to § 6-1929.

Cited in In re Jones, 123 WLR 1917 (Super. Ct. 1995).

Subchapter V. Rights of Mentally Retarded Persons.

§ 6-1961. Habilitation and care; habilitation program.

(a) To the extent that appropriated funds are available to carry out the purposes of this chapter, no District resident with mental retardation shall be denied habilitation, care, or both suited to the person's needs regardless of the person's age, degree of retardation, or handicapping condition.

(b) To the extent that appropriated funds are available to carry out the purposes of this chapter, each customer shall be provided a habilitation program that will maximize the customer's human abilities, enhance the customer's ability to cope with the customer's environment, and create a reasonable opportunity for progress toward the goal of independent living. (1973 Ed., § 6-1681; Mar. 3, 1979, D.C. Law 2-137, § 501, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(m), 42 DCR 3684; Mar. 24, 1998, D.C. Law 12-81, § 9, 45 DCR 745.)

Effect of amendments. — D.C. Law 11-52 rewrote this section.

D.C. Law 12-81 substituted "that appropriated funds are available to carry out" for "of funds appropriated for" in (a) and (b).

Temporary amendment of section. — D.C. Law 11-29 rewrote this section.

Emergency act amendments.

For temporary amendment of section, see § 4(e) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(e) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(m) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1997," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 6-1962. Living conditions; teaching of skills.

Customers shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Customers shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living. (1973 Ed., § 6-1682; Mar. 3, 1979, D.C. Law 2-137, § 502, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(n), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "Customers" for "Residents" in the first and third sentences.

Emergency act amendments.

For temporary amendment of section, see § 506(n) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1963. Least restrictive conditions.

Customers shall have a right to the least restrictive conditions necessary and available to achieve the purposes of habilitation. To this end, the institution or residential facility shall move customers from: (1) more to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residence; (5) segregated to integrated community living; or (6) dependent to independent living. If at any time the Director decides that a customer should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the Court pursuant to § 6-1929. Notice shall be provided to the customer, the customer's counsel,

the customer's mental retardation advocate, if one has been appointed, and the customer's parent or guardian who petitioned for the commitment. (1973 Ed., § 6-1683; Mar. 3, 1979, D.C. Law 2-137, § 503, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(o), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer", "customers", and "customer's" for "resident", "residents", or "resident's", respectively, throughout this section; and, in the first sentence, inserted "and available."

Temporary amendment of section. — D.C. Law 11-29 inserted "and available" in the first sentence.

Emergency act amendments.

For temporary amendment of section, see § 4(f) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(f) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(c) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(o) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1964. Comprehensive evaluation and individual habilitation plan.

(a) Prior to each customer's commitment pursuant to § 6-1943, the customer shall receive a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer's admission pursuant to § 6-1922, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan. Annual reevaluations or screenings of the customer shall be provided as determined by the customer's interdisciplinary team in accordance with Accreditation Council for Services for People with Developmental Disabilities Standards.

(b) Within 10 days of a customer's commitment pursuant to § 6-1943, or within 30 days of admission pursuant to § 6-1922, the facility, the facility's sponsoring agency, or the Department of Human Services shall:

(1) Designate each professional or staff member who is responsible for implementing or overseeing the implementation of a customer's individual habilitation plan;

(2) Designate each District agency, private agency, or service responsible for providing the habilitation included in the plan; and

(3) Specify the role and objectives of each District agency, private agency, or service with respect to the plan.

(c) To the extent of funds appropriated for the purposes of this chapter, each customer shall receive habilitation, care, or both consistent with the recommendations included in the customer's individual habilitation plan. The Department of Human Services shall set standards for habilitation and care provided to such customers, consistent with standards set by the Accreditation Council for Services for the Mentally Retarded and Other Developmentally Disabled Persons, including staff-customer and professional-customer ratios. In the interests of continuity of care, one qualified mental retardation professional shall be responsible for informing the Chief Program Director, or the Director, when the customer should be released to a less restrictive setting and for continually reviewing the plan. (1973 Ed., § 6-1684; Mar. 3, 1979, D.C.

Law 2-137, § 504, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(p), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 rewrote (a) and (b); and, in (c), substituted "customer" and "customers" for "resident" or "residents", respectively, throughout, and rewrote the first sentence.

Temporary amendment of section. — D.C. Law 11-29 rewrote the first sentence in (c).

Emergency act amendments.

For temporary amendment of section, see § 4(g) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(g) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(d) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(p) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1965. Visitors; mail; access to telephones; religious practice; personal possessions; privacy; exercise; diet; medical attention; medication.

(a) Subject to restrictions by a physician for good cause, each customer has the right to receive visitors of his or her own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the customer and his or her visitors. Notwithstanding the above, each customer has the right to receive visits from his or her attorney, physician, psychologist, clergyman, social worker, parents or guardians, or mental retardation advocate in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(b) Writing material and postage stamps shall be reasonably available for the customer's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The customer shall have the right to send and receive sealed and uncensored mail. The customer has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communications are not satisfactory, he or she shall be afforded reasonable use of long distance calls. A customer who is unable to pay shall be furnished such writing, postage, and telephone facilities without charge.

(c) Each customer shall have the right to follow or abstain from the practice of religion. The facility shall provide appropriate assistance in this connection including reasonable accommodations for religious worship and/or transportation to nearby religious services. Customers who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

(d) Each customer shall have the right to a humane psychological and physical environment. He or she shall be provided a comfortable bed and adequate changes of linen and reasonable storage space, including locked space, for his or her personal possessions. A record shall be kept of each customer's personal possessions. Except when curtailed for reason of safety or

therapy as documented in his or her record by a physician, he or she shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

(e) Each customer shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

(f) Each customer has the right to a nourishing, well-balanced, varied, and appetizing diet, and where ordered by a physician and/or nutritionist, to a special diet.

(g) Each customer shall have the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once a year thereafter.

(h) All customers have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within 24 hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse, or by a Director acting upon a licensed physician's instructions. The attending physician shall review on a regular basis the drug regimen of each customer under his or her care. All prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs, or in quantities that interfere with the customer's habilitation program. (1973 Ed., § 6-1685; Mar. 3, 1979, D.C. Law 2-137, § 505, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(q), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer", "customers", and "customer's" for "resident", "residents", and "resident's", respectively, throughout this section.

Emergency act amendments.

For temporary amendment of section, see § 402(e) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(q) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1967. Essential surgery in medical emergency.

If, in a medical emergency, it is the judgment of one licensed physician with the concurring judgment of another licensed physician that delay in obtaining consent for surgery would create a grave danger to the health of the customer, essential surgery may be administered without the consent of the customer if the necessary information is provided to the customer's parent, guardian, spouse or next of kin to enable such person to give informed, knowing and intelligent consent and such consent is given prior to the surgical procedure. In the event that there is no person who can be reasonably contacted, such surgery may be performed upon the authorization of the chief medical officer of the facility. (1973 Ed., § 6-1687; Mar. 3, 1979, D.C. Law 2-137, § 507, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(r), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer" and "customer's" for "resident" and "resident's", respectively, throughout this section.

Temporary amendment of section. — Section 3(a) of D.C. Law 12-249 amended this section to read as follows:

"(a) Subject to the limitations provided in subsection (b) of this section, if a customer is certified as an incapacitated individual in accordance with § 21-2204, and there is no known person reasonably available, mentally capable, and willing to act pursuant to § 21-2210, the Administrator of the Mental Retardation and Developmental Disabilities Administration ('Administrator'), or the Administrator's designee, is authorized to grant, refuse, or withdraw consent on behalf of a customer with respect to the provision of any health care service, treatment, or procedure; provided, that two licensed physicians have certified in writing that the health care service, treatment, or procedure is clinically indicated to maintain the health of the customer.

"(b) The Administrator, or the Administrator's designee, is not authorized, unless authorized by a court, to consent to the following:

"(1) An abortion, sterilization, psychosurgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the customer;

"(2) Convulsive therapy;

"(3) Experimental treatments or behavior modification programs involving aversive stimuli or deprivation of rights; or

"(4) The withholding of life-saving medical procedures.

"(c) Nothing in this section shall be read to require any person to execute a durable power of attorney for health care."

Section 5(b) of D.C. Law 12-249 provided that the act shall expire after 225 days of its having taken effect.

Temporary addition of section. — Section 3(b) of D.C. Law 12-249 added a § 6-1967.1 to read as follows:

"§ 6-1967.1. (a) It shall be the policy of the District government to ensure that incapacitated persons have available health care decisionmakers. Within 6 months of April 17, 1999, the Administrator of the Mental Retardation and Developmental Disabilities Administration shall establish a plan to encourage, as much as possible, the provisions of health care decisionmakers pursuant to § 21-1101 et seq. for all incapacitated and potentially incapacitated persons under the Administrator's jurisdiction.

"(b) Nothing in this section shall be read to require any person to execute a durable power of attorney for health care."

Section 5(b) of D.C. Law 12-249 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 402(f) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(r) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 3(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

For temporary addition of § 6-1967.1, see § 3(b) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

Legislative history of Law 11-52. — See note to § 6-1901.

Legislative history of Law 12-249. — Law 12-249, the "Mentally Retarded Citizens Substituted Consent for Health Care Decisions and Emergency Care Definition Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-757. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-588 and transmitted to both Houses of Congress for its review. D.C. Law 12-249 became effective on April 20, 1999.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 6-1968. Sterilization.

No customer of a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility. (1973 Ed., § 6-1688; Mar. 3, 1979, D.C. Law 2-137, § 508, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(s), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer" for "resident" near the beginning.

Emergency act amendments.

For temporary amendment of section, see § 506(s) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1969. Experimental research.

Customers shall have a right not to be subjected to experimental research without the express and informed consent of the customer, or if the customer cannot give informed consent, of the customer's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department of Human Services before such consent shall be sought. Prior to such approval, the Department shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American Association on Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health and Human Services for projects supported by that agency. (1973 Ed., § 6-1689; Mar. 3, 1979, D.C. Law 2-137, § 509, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(t), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer", "customers", and "customer's" for "resident", "residents", and "resident's", respectively, throughout the first sentence.

Emergency act amendments.

For temporary amendment of section, see § 402(g) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(t) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1970. Mistreatment, neglect or abuse prohibited; use of restraints; seclusion; "time-out" procedures.

(a) Mistreatment, neglect or abuse in any form of any customer shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a customer from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have been attempted and failed (such failure to be documented in the customer's record) and only if such restraints impose the least possible restriction consistent with their purposes. Each facility shall have a written policy defining:

(1) The use of restraints;

(2) The professionals who may authorize such use; and

(3) The mechanism for monitoring and controlling such use.

(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over 12 hours. A customer placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the customer. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each 2 hours in which restraint is employed.

(d) Seclusion, defined as a placement of a customer alone in a locked room, shall not be employed. Legitimate "time-out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping

programs. Each facility shall have a written policy regarding "time-out" procedures.

(e) Alleged instances of mistreatment, neglect or abuse of any customer shall be reported immediately to the Director and the Director shall inform the customer's counsel, parent or guardian who petitioned for the commitment, and the customer's mental retardation advocate of any such instances. There shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect, or abuse shall not be subjected to adverse action by the facility because of the report.

(f) A customer's counsel, parent or guardian who petitioned for commitment and a customer's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs. (1973 Ed., § 6-1690; Mar. 3, 1979, D.C. Law 2-137, § 510, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(u), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer" and "customer's" for "resident" and "resident's", respectively, throughout this section.

Emergency act amendments. — For temporary amendment of section, see § 402(h) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(u) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1971. Performance of labor.

(a) No customer shall be compelled to perform labor which involves the operation, support, or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor shall promulgate rules and regulations governing compensation of customers who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

(b) A customer may be required to perform habilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the customer's habilitation plan and supervised by a qualified mental retardation professional designated by the Director.

(c) A customer may be required to perform tasks of a housekeeping nature for his or her own person only. (1973 Ed., § 6-1691; Mar. 3, 1979, D.C. Law 2-137, § 511, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(v), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer", "customers", and "customer's" for "resident", "residents", and "resident's", respectively, throughout this section.

Emergency act amendments. — For temporary amendment of section, see § 402(i) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(v) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1972. Maintenance of records; information considered privileged and confidential; access; contents.

Complete records for each customer shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular customer and to the Department of Human Services without divulging the identity of the customer. All information contained in a customer's records shall be considered privileged and confidential. The customer's parent or guardian who petitioned for the commitment, the customer's counsel, the customer's mental retardation advocate and any person properly authorized in writing by the customer, if such customer is capable of giving such authorization, shall be permitted access to the customer's records. These records shall include:

(1) Identification data, including the customer's legal status;

(2) The customer's history, including but not limited to:

* * * * *

(3) The customer's grievances, if any;

(4) An inventory of the customer's life skills;

* * * * *

(6) A copy of the individual habilitation plan; and any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the customer's program;

* * * * *

(9) A summary of each significant contact by a professional person with a customer;

(10) A summary of the customer's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to § 6-1964(c) to supervise the customer's habilitation;

(11) A monthly summary of the extent and nature of the customer's work activities and the effect of such activity upon the customer's progress along the habilitation plan;

* * * * *

(13) A description of any extraordinary incident or accident in the facility involving the customer, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of customer's mistreatment;

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 506(w), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer" and "customer's" for "resident" and "resident's", respectively, throughout this section.

Emergency act amendments. — For temporary amendment of section, see § 402(j) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR

2217) and § 506(w) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1973. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses.

(a) Any interested party shall have the right to initiate an action in the Court to compel the rights afforded mentally retarded persons under this chapter.

(b) Any customer shall have the right to a civil remedy in an amount not less than $25 per day from the Director or the District of Columbia, separately or jointly, for each day in which said customer at a facility is not provided a program adequate for habilitation and normalization pursuant to the customer's individual habilitation plan, unless the District is unable to pay the cost of recommended services because available funds appropriated for the purposes of this chapter are insufficient to pay the costs.

* * * * *

(d) The good faith belief that an habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the customer within 5 days of a Court's decision that the program is inappropriate.

* * * * *

(July 25, 1995, D.C. Law 11-29, § 4(h), 42 DCR 2950; Sept. 26, 1995, D.C. Law 11-52, § 506(x), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 substituted "customer" and "customer's" for "resident" and "resident's", respectively, throughout this section; and, in (b), added "unless the District ... pay the costs" at the end.

Temporary amendment of section. — D.C. Law 11-29 added "unless the District ... pay the costs" to the end of (b).

Emergency act amendments. — For temporary amendment of section, see § 4(h) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(h) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(k) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(x) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

Subchapter VI. Miscellaneous Provisions; Effective Date.

§ 6-1981. Increased financial responsibility.

Repealed.

(1973 Ed., § 6-1695; Mar. 3, 1979, D.C. Law 2-137, § 601, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(y), 42 DCR 3684.)

Temporary repeal of section. — Section 4(i) of D.C. Law 11-29 repealed this section.

Emergency act amendments. — For temporary repeal of section, see § 4(i) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834), § 4(i) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014), and § 506(y) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1983. Appropriations.

There is hereby authorized to be appropriated such District funds as may be necessary and available to implement the provisions of this chapter, including funds for the development, and the support, of community-based services for mentally retarded persons. (1973 Ed., § 6-1697; Mar. 3, 1979, D.C. Law 2-137, § 603, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(z), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 inserted "and available."

Temporary amendment of section. — D.C. Law 11-29 inserted "and available."

Emergency act amendments. — For temporary amendment of section, see § 4(j) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(j) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(z) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

§ 6-1983.1. Rules for implementation.

The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, shall issue rules to implement the provisions of this chapter. (Mar. 3, 1979, D.C. Law 2-137, § 603a, as added Sept. 26, 1995, D.C. Law 11-52, § 506(aa), 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 added this section.

Temporary addition of section. — D.C. Law 11-29 added this section.

Emergency act amendments. — For temporary addition of section, see § 4(k) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834), § 4(k) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014), and § 506(aa) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-29. — See note to § 6-1931.

Legislative history of Law 11-52. — See note to § 6-1901.

Delegation of Authority Pursuant to Title V of D.C. Law 11-52, the "Omnibus Budget Support Act of 1995." — See Mayor's Order 97-53, March 19, 1997 (44 DCR 2162).

CHAPTER 20. MENTAL HEALTH INFORMATION.

Subchapter I. Definitions; General Provisions.

Sec.
6-2001. Definitions.

Subchapter I. Definitions; General Provisions.

§ 6-2001. Definitions.

For purposes of this chapter:

* * * * *

(11) "Mental health professional" means any of the following persons engaged in the provision of professional services:

(A) A person licensed to practice medicine;

(B) A person licensed to practice psychology;

(C) A licensed social worker;

(D) A professional marriage, family, or child counselor;

(E) A rape crisis or sexual abuse counselor who has undergone at least 40 hours of training and is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist;

(F) A licensed nurse who is a professional psychiatric nurse; or

(G) Any person reasonably believed by the client to be a mental health professional within the meaning of subparagraphs (A) through (F) of this paragraph.

* * * * *

(May 23, 1995, D.C. Law 10-257, § 401(a), 42 DCR 53.)

Effect of amendments.

D.C. Law 10-257, in (11), inserted present (E), deleted former (E-1), and redesignated former (E) and (F) as (F) and (G), respectively.

Legislative history of Law 10-257. — Law 10-257, the "Anti-Sexual Abuse Act of 1994," was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

Editor's notes. — D.C. Act 10-385 which affected this section as set out in the 1995 Replacement Volume became Law 10-257, effective May 23, 1995. The historical citation for this section and the notes relating to D.C. Law 10-257 have been set out herein to clarify the law number and effective date of that act.

§ 6-2002. Disclosures prohibited; exceptions.

Transfer of functions. — Pursuant to Reorganization Plan No. 5 of 1996, the function of providing mental health services to inmates in Department of Corrections facilities provided by the Bureau of Correctional Services, Commission on Mental Health Services, were transferred to the Department of Corrections.

CHAPTER 21. CHILD ABUSE AND NEGLECT.

Subchapter I. Reporting Abuse and Neglect.

Sec.

6-2104.1. Exposure of children to drug-related activity.

Subchapter II. Child Protection Register.

Sec.

6-2113. Access to Register; release of information generally.

Subchapter I. Reporting Abuse and Neglect.

§ 6-2101. Definitions.

Cited in LaShawn A. v. Barry, 87 F.3d 1389 (D.C. Cir. 1996); Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

§ 6-2102. Handling of reports — By Division.

Procedures do not give rise to constitutional obligation to protect. — By codifying procedures for investigating child abuse and neglect reports, the District has not assumed a constitutional obligation to protect children from such abuse and neglect; the fact that plaintiff could point to a District statute mandating investigation did not create a due process right to such protection by the District government. Doe ex rel. Fein v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996).

§ 6-2103. Same — By police.

Procedures do not give rise to constitutional obligation to protect. — By codifying procedures for investigating child abuse and neglect reports, the District has not assumed constitutional obligation to protect children from such abuse and neglect; fact that plaintiff could point to a District statute mandating investigation did not create due process right to such protection by the District government. Doe ex rel. Fein v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996).

§ 6-2104. Investigation.

Cited in Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

§ 6-2104.1. Exposure of children to drug-related activity.

(a) The Division shall, upon receipt of a report from a law enforcement officer or a health professional that a child is abused as a result of inadequate care, control, or subsistence due to exposure to drug-related activity in the home environment:

* * * * *

(2) Determine whether the child should be removed temporarily from the home environment or can be protected in the home environment in accordance with § 6-2105(a); and

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 13(a), 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 validated a previously made change in (a)(2).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 6-2105. Removal of children.

Cited in Doe ex rel. Fein v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996).

§ 6-2107. Social investigation; services; report.

Cited in In re G.G., App. D.C., 667 A.2d 1331 (1995).

Subchapter II. Child Protection Register.

§ 6-2113. Access to Register; release of information generally.

(a) The staff which maintains the Child Protection Register shall grant access to information contained in said Register only to the following persons:

* * * * *

(5) Each person identified in a report as a person responsible for the neglect of the child or that person's attorney;

(6) The parent, guardian, custodian, or attorney of the child who is the subject of the report; and

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 13(b), 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 validated previously made stylistic changes in (a)(5) and (6).

Legislative history of Law 11-110. — See note to § 6-2104.1.

Subchapter III. Child Protective Services Division.

§ 6-2121. Establishment and purposes.

Delegation of Authority pursuant to Title XXIII (Section 2352(a)) of Public Law 97-35, the "Omnibus Budget Reconciliation Act, to Deliver Social Services Block Grant Funded Homemaker Services for Individuals and Families who are in Need of or Receiving Pr — See Mayor's Order 97-101, May 28, 1997 (44 DCR 3529).

"Services." — The term "services" is only meant to encompass those actions that will enable a neglected or abused child to be reunited with his family and return to a safe domestic environment absent such abuse and neglect. In re G.G., App. D.C., 667 A.2d 1331 (1995).

Cited in In re G.G., App. D.C., 667 A.2d 1331 (1995); LaShawn A. v. Barry, 87 F.3d 1389 (D.C. Cir. 1996).

§ 6-2123. Duties and responsibilities.

Emergency act amendments. — For temporary provisions transferring to the Mayor the discretionary authority for creating monetary obligations and approving expenditures in the District of Columbia's Aid to Families With Dependent Children, Medicaid, and child abuse and neglect/foster care programs that Reorganization Plan No. 2 of 1979, Reorganization Plan No. 3 of 1986, and the Prevention of Child Abuse and Neglect Act of 1977 vested in the Department of Human Services, see § 2 of the Reorganization No. 2 of 1995 to Transfer to the Mayor Certain Discretionary Authority Vested in the Department of Human Services Emergency Act of 1995 (D.C. Act 11-103, July 21, 1995, 42 DCR 4012).

Directives and Redelegation of Authority to Assure the Continued Operation of the Aid to Families with Dependent Children, Medicaid and Child Abuse-and-Neglect/Foster Care Programs During Fiscal Year 1995. — See Mayor's Order 95-115, August 31, 1995.

Cited in In re G.G., App. D.C., 667 A.2d 1331 (1995).

§ 6-2124. Services authorized; custodial placement; removal of child.

Cited in Doe ex rel. Fein v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996).

§ 6-2127. Unauthorized disclosure of records.

Cited in In re G.G., App. D.C., 667 A.2d 1331 (1995).

Subchapter IV. Child Abuse and Neglect Prevention Children's Trust Fund.

§ 6-2131. Definitions.

Section references. — This section is referred to in §§ 16-911 and 16-914.

§ 6-2132. Establishment of the Child Abuse and Neglect Prevention Children's Trust Fund.

* * * * *

(d) Repealed.

(d-1) The Trust Fund may hold and distribute funds for other organizations. Auditing procedures shall be established by the Board.

* * * * *

(f) Repealed.

* * * * *

(Oct. 5, 1993, D.C. Law 10-56, § 3, 40 DCR 7222; Mar. 8, 1994, D.C. Law 10-75, § 7, 41 DCR 8072; June 28, 1994, D.C. Law 10-134, § 7, 41 DCR 2597; Apr. 20, 1999, D.C. Law 12-233, § 2(a), 46 DCR 564.)

Effect of amendments.

D.C. Law 12-233 repealed (d) and (f), and inserted (d-1).

Temporary amendment of section. — Section 2(a) of D.C. Law 12-51 rewrote former (d); inserted (d-1); and repealed (f).

Section 4(b) of D.C. Law 12-51 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Amendment Act of 1997 (D.C. Act 12-141, August 12, 1997, 44 DCR 4854), see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-182, October 30, 1997, 44 DCR 6956), and see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-252, January 29, 1998, 45 DCR 901).

For temporary amendment of section, see § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Amendment Act of 1998 (D.C. Act 12-484, October 8, 1998, 45 DCR 8030), and § 2(a) of the Child Abuse and Neglect Prevention Children's Trust Fund Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-618, January 22, 1999, 46 DCR 1337).

Section 4 of D.C. Act 12-484 provides for the application of the act.

Section 4 of D.C. Act 12-618 provides for the application of the act.

Legislative history of Law 12-51. — Law 12-51, the "Child Abuse and Neglect Prevention Children's Trust Fund Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-316. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-168 and transmitted to both Houses of Congress for its review. D.C. Law 12-51 became effective on February 27, 1998.

Legislative history of Law 12-233. — Law 12-233, the "Child Abuse and Neglect Prevention Children's Trust Fund Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-380, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 16, 1998, it was assigned Act No. 12-553 and transmitted to both Houses of Congress for its review. D.C. Law 12-233 became effective on April 20, 1999.

§ 6-2133. Establishment of Board of Directors.

(a) A self-perpetuating Board of Directors is established to manage the affairs of the Trust Fund. The Board of Directors shall have 15 members. The D.C. Treasurer and the Director of the Department of Human Services shall serve as members of the Board of Directors. The remaining 12 members shall have a demonstrated knowledge in the area of child abuse and child neglect prevention and shall reflect a diversity of gender and ethnicity. Each ward in the District shall be represented on the Board of Directors. Through its by-laws, the Board of Directors may expand the number of members of the Board to include a business representative.

(b) The D.C. Treasurer and the Director of the Department of Human Services shall serve terms as members of the Board of Directors for the same duration as the terms of their offices.

* * * * *

(f) The Board of Directors shall appoint nongovernmental replacement members so that subsequent Board of Directors meet the representational requirements of subsection (a) of this section and the bylaws adopted by the Board of Directors. A succeeding member shall serve the balance of the term of the member that he or she succeeds if the term is unexpired. A succeeding member who succeeds a member whose term has expired shall serve a term of 3 years.

* * * * *

(Apr. 20, 1999, D.C. Law 12-233, § 2(b), 46 DCR 564.)

Effect of amendments. — D.C. Law 12-233 substituted "D.C. Treasurer and the Director of the Department of Human Services" for "D.C. Treasurer, Director of the Department of Human Services, and the Director of the Mayor's Youth Initiatives Office" in the third sentence of (a) and in (b); added the last sentence in (a); and deleted the last sentence in (f).

Temporary amendment of section. — Section 2(b) of D.C. Law 12-51 substituted "D.C. Treasurer and the Director of the Department of Human Services" for "D.C. Treasurer, Director of the Department of Human Services, and the Director of the Mayor's Youth Initiatives Office" in the third sentence of (a) and in (b); added the last sentence in (a); and deleted the last sentence in (f).

Section 4(b) of D.C. Law 12-51 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2(b) of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Amendment Act of 1997 (D.C. Act 12-141, August 12, 1997, 44 DCR 4854), see § 2(b) of the Child Abuse and Neglect Prevention Children's Trust Fund Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-182, October 30, 1997, 44 DCR 6956), and see § 2(b) of the Child Abuse and Neglect Prevention Children's Trust Fund Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-252, January 29, 1998, 45 DCR 901).

For temporary amendment of section, see § 2(b) of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Amendment Act of 1998 (D.C. Act 12-484, October 10, 1998, 45 DCR 8030), and § 2(b) of the Child Abuse and Neglect Prevention Children's Trust Fund Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-618, January 22, 1999, 46 DCR 1337).

Section 4 of D.C. Act 12-484 provides for the application of the act.

Section 4 of D.C. Act 12-618 provides for the application of the act.

Legislative history of Law 12-51. — Law 12-51, the "Child Abuse and Neglect Prevention Children's Trust Fund Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-316. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-168 and transmitted to both Houses of Congress for its review. D.C. Law 12-51 became effective on February 27, 1998.

Legislative history of Law 12-233. — See note to § 6-2132.

§ 6-2138. Tax status.

Establishment of juvenile curfew. — For temporary provisions establishing a curfew for juveniles under the age of 17 years in the District of Columbia, parental responsibility for implementation of the act, and exceptions to the act, see §§ 2 through 4 of the Juvenile Curfew Emergency Act of 1995 (D.C. Act 11-86, July 6, 1995, 42 DCR 3612).

Subchapter V. Adoption Improvement.

§ 6-2141. Database.

The District of Columbia Child and Family Services Agency (referred to as "CFSA") shall maintain an accurate database listing and tracking any child found by the Family Division of the District of Columbia Superior Court to be abused or neglected and who is in the custody of the District of Columbia, including any child with the goal of adoption or legally free for adoption. (Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 157(b).)

Effect of amendments. — Section 157(b) of Pub. L. 105-277, 112 Stat. 2681-146, added this section.

District of Columbia Adoption Improvement Act of 1998. — Section 157(a) of Pub. L. 105-277, 112 Stat. 2681-146, provided that the subchapter may be cited as the "District of Columbia Adoption Improvement Act of 1998."

§ 6-2142. Contracting with private service providers.

(a) *Private contracts.* — Not later than September 30, 1999, CFSA shall enter into contracts with private service providers to perform some of the

adoption recruitment and placement functions of CFSA, which may include recruitment, homestudy, and placement services.

(b) *Competitive bidding.* — Any contract entered into pursuant to subsection (a) of this section shall be subject to a competitive bidding process when required by CFSA contracting policies and procedures.

(c) *Performance-based compensation.* —

(1) *In general.* — Any contract entered into pursuant to subsection (a) of this section shall compensate the winning bidder pursuant to subsection (b) of this section upon completion of contract deliverables.

(2) *Contract deliverables.* — In identifying contract deliverables, CFSA shall consider:

(A) In the case of recruitment, receipt of a list of potential adoptive families;

(B) In the case of homestudies, receipt of a completed home-study in a form specified in advance by CFSA; or

(C) In the case of placements, the child is placed in an adoptive home approved by CFSA or the adoption is finalized.

(d) *Types of contracts.* — Nothing in this section shall be construed to prevent CFSA from entering into contracts that provide for multiple deliverables or conditions for partial payment.

(e) *Removal of barriers to adoption.* — CFSA shall meet with contractors to address issues identified during the term of a contract entered into pursuant to this subchapter, including issues related to barriers to timely adoptions. (Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 157(c).)

Effect of amendments. — Section 157(c) of Pub. L. 105-277, 112 Stat. 2681-146, added this section.

CHAPTER 21A. JUVENILE CURFEW.

§ 6-2181. Findings and purpose.

(a) The Council of the District of Columbia ("Council") has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of 17 years in the District of Columbia.

(b) The Council has determined that persons under the age of 17 years are particularly susceptible, because of their lack of maturity and experience, to participate in unlawful and gang-related activities and to be the victims of older perpetrators of crime.

(c) The Council has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over, and responsibility for, children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities.

(d) The Council has determined that a curfew for those under the age of 17 years will be in the interest of the public health, safety, and general welfare

and will help to attain these objectives and to diminish the undesirable impact of this conduct on the citizens of the District of Columbia.

(e) The Council determines that passage of a curfew law will protect the welfare of minors by:

(1) Reducing the likelihood that minors will be the victims of criminal acts during the curfew hours;

(2) Reducing the likelihood that minors will become involved in criminal acts or exposed to narcotics trafficking during the curfew hours; and

(3) Aiding parents or guardians in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care. (Sept. 20, 1995, D.C. Law 11-48, § 2, 42 DCR 3627.)

Temporary repeal of § 6(b) of Law 11-48. — Section 2 of D.C. Law 12-45 provides that section 6(b) of the Juvenile Curfew Act of 1995, D.C. Law 11-48, is repealed.

Section 6(b) of D.C. Law 12-45 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary repeal of § 6(b) of D.C. Law 11-48, see § 2 of the Juvenile Curfew and Retired Police Officer Redeployment Emergency Amendment Act of 1997 (D.C. Act 12-148, September 15, 1997, 44 DCR 5461).

Section 6 of D.C. Act 12-148 provides for the application of the act.

Legislative history of Law 11-48. — Law 11-48, the "Juvenile Curfew Act of 1995," was introduced in Council and assigned Bill No. 11-25, which was retained by Council. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-90 and transmitted to both Houses of Congress for its review. D.C. Law 11-48 became effective on September 20, 1995.

Legislative history of Law 12-45. — Law 12-45, the "Juvenile Curfew and Retired Police Officer Redeployment Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-351. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-160 and transmitted to both Houses of Congress for its review. D.C. Law 12-45 became effective on February 26, 1998.

Expiration of Law 11-48. — Section 6(b) of D.C. Law 11-48 provided that the act shall expire two years after September 20, 1995.

For temporary repeal of § 6(b) of Law 11-48, see § 2 of the Juvenile Curfew Emergency Amendment Act of 1998 (D.C. Act 12-345, April 27, 1998, 45 DCR 4616).

Section 2 of D.C. Law 12-128 provided that § 6(b) of D.C. Law 11-48 is repealed.

Constitutionality. — The Juvenile Curfew Act of 1995 held unconstitutional. Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996).

Intermediate scrutiny is the appropriate standard to be used in analyzing the constitutionality of this chapter; while the District has shown an important interest in reducing juvenile crime and victimization sufficient to satisfy this standard, this chapter has not been shown to be substantially related to these goals. Hutchins ex rel. Owens v. District of Columbia, 144 F.3d 798 (D.C. Cir. 1998).

Cited in In re R.M.C., App. D.C., 719 A.2d 491 (1998).

§ 6-2182. Definitions.

For the purposes of this chapter, the term:

(1) "Curfew hours" means from 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday, until 6:00 a.m. on the following day, and from 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday. During the months of July and August, the term "curfew hours" means from 12:01 a.m. until 6:00 a.m.

(2) "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term "emergency" includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation that requires immediate action to prevent serious bodily injury or loss of life.

(3) "Establishment" means any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

(4) "Guardian" means a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by a court.

(5) "Minor" means any person under the age of 17 years, but does not include a judicially emancipated minor or a married minor.

(6) "Narcotic trafficking" means the act of engaging in any prohibited activity related to narcotic drugs or controlled substances as defined in Chapter 5 of Title 33.

(7) "Operator" means any individual, firm, association, partnership, or corporation that operates, manages, or conducts any establishment. The term "operator" includes the members or partners of an association or partnership and the officers of a corporation.

(8) "Parent" means a natural parent, adoptive parent or step-parent, or any person who has legal custody by court order or marriage, or any person not less than 21 years of age who is authorized by the natural parent, adoptive parent, step-parent or custodial parent of a child to be a caretaker for the child.

(9) "Public place" means any place to which the public, or a substantial group of the public, has access, and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(10) "Remain" means to linger or stay or fail to leave the premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(11) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. (Sept. 20, 1995, D.C. Law 11-48, § 3, 42 DCR 3627.)

Legislative history of Law 11-48. — See note to § 6-2181.

Expiration of Law 11-48. — See notes to § 6-2181.

Constitutionality. — The Juvenile Curfew Act of 1995 held unconstitutional. Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996).

Intermediate scrutiny is the appropriate standard to be used in analyzing the constitutionality of this chapter; while the District has shown an important interest in reducing juvenile crime and victimization sufficient to satisfy this standard, this chapter has not been shown to be substantially related to these goals. Hutchins ex rel. Owens v. District of Columbia, 144 F.3d 798 (D.C. Cir. 1998).

Cited in In re R.M.C., App. D.C., 719 A.2d 491 (1998).

§ 6-2183. Curfew authority; defenses; enforcement and penalties.

(a)(1) A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the District of Columbia during curfew hours.

(2) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the District of Columbia during curfew hours.

(3) The owner, operator, or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(b)(1) It is a defense to prosecution under this chapter that the minor was:

(A) Accompanied by the minor's parent or guardian;

(B) On an errand at the direction of the minor's parent or guardian, without any detour or stop;

(C) In a motor vehicle, train, or bus involved in interstate travel;

(D) Engaged in an employment activity pursuant to Chapter 5 of Title 36 or going to, or returning home from, an employment activity, without any detour or stop;

(E) Involved in an emergency;

(F) On the sidewalk that abuts the minor's residence or that abuts the residence of a next-door neighbor if the neighbor did not complain to the Metropolitan Police Department about the minor's presence;

(G) In attendance at an official school, religious, or other recreational activity sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor, or going to, or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor; or

(H) Exercising First Amendment rights protected by the United States Constitution, including free exercise of religion, freedom of speech, and the right of assembly.

(2) It is a defense to prosecution under subsection (a)(3) of this section that the owner, operator, or employee of an establishment promptly notified the Metropolitan Police Department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(c)(1) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (b) of this section is proffered or is present.

(2) If a police officer determines that a minor is committing a curfew offense, the police officer shall take the minor to the nearest available Police District headquarters or substation or other area designated by the Metropolitan Police Department.

(3) A minor who violates this chapter shall be detained by the Metropolitan Police Department at the nearest available Police District headquarters or substation or other area designated by the Metropolitan Police Department and released into the custody of the minor's parent, guardian, or an adult person acting in loco parentis. The minor's parent or an adult person acting in loco parentis with respect to the minor shall be called to the Police District headquarters or substation or other designated area to take custody of the minor. A minor who is released to a person acting in loco parentis with respect to the minor shall not be taken into custody for violation of this chapter while returning home with the person acting in loco parentis. If no one claims

responsibility for the minor, the minor may be taken to the minor's residence or placed in the custody of the appropriate official at the Family Services Administration of the Department of Human Services and, subsequently, released at 6:00 a.m. the following morning.

(d)(1) Any adult who violates a provision of this chapter is guilty of a separate offense for each day, or part of a day, during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed $500 or community service.

(2) Parents or persons in loco parentis of the minor may, upon each conviction for violating this chapter, be required to complete parenting classes pursuant to Chapter 21 of Title 6 or Title 16.

(3) When required by § 16-2302, charges brought under this chapter shall be transferred to the Family Division of the Superior Court of the District of Columbia.

(4) A minor adjudicated of a violation of this chapter by the Family Division of the Superior Court may be ordered to perform community service of up to 25 hours for each violation.

(e)(1) The Mayor shall report to the Council, not less than 90 days prior to the expiration of this chapter, on the curfew's effectiveness and shall recommend that the curfew either be continued or discontinued.

(2) The Mayor shall include the following in the report required by this subsection:

(A) The number of minors detained and the number of persons fined as a result of a violation of this chapter;

(B) The number of criminal homicides and other narcotic trafficking related crimes of violence committed during the time that this chapter is in effect by age of persons involved and by time of day;

(C) The number of minors injured during the curfew hours as a result of crime and the cause of each injury; and

(D) The District's net cost of enforcing the ordinance. (Sept. 20, 1995, D.C. Law 11-48, § 4, 42 DCR 3627.)

Legislative history of Law 11-48. — See note to § 6-2181.

Expiration of Law 11-48. — See notes to § 6-2181.

Constitutionality. — The Juvenile Curfew Act of 1995 held unconstitutional. Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996).

Intermediate scrutiny is the appropriate standard to be used in analyzing the constitutionality of this chapter; while the District has shown an important interest in reducing juvenile crime and victimization sufficient to satisfy this standard, this chapter has not been shown to be substantially related to these goals. Hutchins ex rel. Owens v. District of Columbia, 144 F.3d 798 (D.C. Cir. 1998).

Standing of parents to challenge Act. — An appellee parent with a child under seventeen who remains subject to the curfew has standing to raise the challenges to the curfew presented by the minor appellees whose claims have become moot as a result of the passage of time. Hutchins ex rel. Owens v. District of Columbia, 144 F.3d 798 (D.C. Cir. 1998).

Enforcement action unlawful. — After officer made an initial and lawful stop of appellant for suspected violation of the curfew law, officer acted unlawfully when he did not ask appellant his age or inquire as to the reason appellant was out during curfew hours before proceeding to frisk him, place him on the car, and handcuff him. In re R.M.C., App. D.C., 719 A.2d 491 (1998).

Officer can take additional enforcement action, without asking the statutory questions, only if he has reasonable and articulable suspicion that apparent offender is armed and dangerous. In re R.M.C., App. D.C., 719 A.2d 491 (1998).

Gun seized during unlawful bodily intrusion should have been suppressed. — Where officer violated this section by not asking appellant his age or inquiring as to the reason appellant was out during curfew hours before proceeding to frisk him, place him on the car,

and handcuff him, the gun seized by the officer as a result of those unlawful actions should have been suppressed at appellants trial. In re R.M.C., App. D.C., 719 A.2d 491 (1998).

CHAPTER 22. PROGRAMS FOR THE AGING.

Subchapter III. Commission on Aging.

Subchapter III. Commission on Aging.

§ 6-2222. Composition; appointment.

The Commission shall consist of 15 public (voting) members appointed by the Mayor. At least one-half of the membership of the Commission shall consist of actual consumers of services under this program, including low income and minority older persons, at least in proportion to the number of minority older persons in the District of Columbia. There shall also be the following ex officio members: The Directors of the Department of Human Services, the Department of Housing and Community Development, the Department of Recreation, the Department of Transportation, the Department of Employment Services, the Public Library, the Chief of the Metropolitan Police Department (or the Director or Chief of such successor agencies), and a member of the Council of the District of Columbia. (1973 Ed., § 6-1722; Oct. 29, 1975, D.C. Law 1-24, title IV, § 402, 22 DCR 2460; _____, 1999, D.C. Law 12- (Act 12-622), § 4(i), 46 DCR 1355.)

Effect of amendments. — D.C. Law 12-(Act 12-622) deleted "with the advice and consent of the Council of the District of Columbia" from the end of the first sentence.

Emergency act amendments. — For temporary amendment of section, see § 4(i) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Section 6 of D.C. Act 13-25 provides for the application of the act.

Legislative history of Law 12-(D.C. Act 12-622). — Law 12-(D.C. Act 12-622), the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-622) became effective on _____.

CHAPTER 23. FIREARMS CONTROL.

Subchapter II. Firearms and Destructive Devices.

Subchapter IV. Licensing of Firearms Businesses.

Subchapter I. General Provisions.

§ 6-2301. Findings and purpose.

Emergency act amendments. — For temporary repeal of § 6(b) of D.C. Law 11-48, see § 2 of the Juvenile Curfew and Retired Police Officer Redeployment Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-220, December 12, 1997, 44 DCR 7741).

Section 5 of D.C. Act 12-220 provided for application of the act.

Cited in In re Moses, App. D.C., 659 A.2d 829 (1995).

§ 6-2302. Definitions.

"Machine gun." — A Metropolitan Police Department "Glock 17" handgun containing a magazine loaded with seventeen rounds of ammunition was a machine gun within the definition of paragraph (10) of this section and § 22-3201(c). Turner v. United States, App. D.C., 684 A.2d 313 (1996).

Subchapter II. Firearms and Destructive Devices.

§ 6-2311. Registration requirements.

(a) Except as otherwise provided in this chapter, no person or organization in the District of Columbia ("District") shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm. A registration certificate may be issued:

(1) To an organization if:

(A) The organization employs at least 1 commissioned special police officer or employee licensed to carry a firearm whom the organization arms during the employee's duty hours; and

(B) The registration is issued in the name of the organization and in the name of the president or chief executive officer of the organization;

(2) In the discretion of the Chief of Police, to a police officer who has retired from the Metropolitan Police Department; or

(3) In the discretion of the Chief of Police, to the Fire Marshal and any member of the Fire and Arson Investigation Unit of the Fire Prevention Bureau of the Fire Department of the District of Columbia, who is designated in writing by the Fire Chief, for the purpose of enforcing the arson and fire safety laws of the District of Columbia.

* * * * *

(Mar. 26, 1999, D.C. Law 12-176, § 5, 45 DCR 5662; Apr. 20, 1999, D.C. Law 12-264, § 19, 46 DCR 2118.)

Effect of amendments.

D.C. Law 12-176 added (a)(3).

D.C. Law 12-264, in (a), deleted "or" from the end of (1)(B), and added "or" to the end of (2).

Emergency act amendments. — For temporary authorization for seizure and forfeiture of firearms under certain circumstances, see § 2(b) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986).

For temporary amendment of section, see § 5 of the Arson Investigators Emergency Amendment Act of 1998 (D.C. Act 12-406, July 13, 1998, 45 DCR 4833), § 5 of the Arson Investigators Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-466, October 28, 1998, 45 DCR 7838), and § 5 of the Arson Investigators Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-539, December 24, 1998, 45 DCR 297).

Section 7 of D.C. Act 12-466 provides for the application of the act.

Section 7 of D.C. Act 12-539 provides for the application of the act.

Legislative history of Law 12-176. — Law 12-176, the "Arson Investigators Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-485, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-418 and transmitted to both Houses of Congress for its review. D.C. Law 12-176 became effective on March 26, 1999.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Seizure and forfeiture of conveyances used in firearms offenses. — Section 2(b) of D.C. Law 11-273 provided for the forfeiture and seizure of any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm as defined in § 6-2302, or in any manner use to facilitate a violation of §§ 22-3203 and 22-3204. D.C. Law 11-273 became effective on June 3, 1997.

Possession of a prohibited weapon. — Charges of possession of an unregistered firearm under subsection (a) and possession of a prohibited weapon under § 22-3214(a) do not merge where defendant possesses a gun, such as a machine gun, which cannot be registered under § 6-2312; possession of a prohibited weapon under subsection (a) requires proof of a fact that the unregistered firearm offense does not. Turner v. United States, App. D.C., 684 A.2d 313 (1996).

Evidence sufficient to support conviction.

Evidence was more than sufficient to support the jury's conclusion that the defendant was in possession of drugs and firearms found under the hood of his car. Evidence sufficient to support conviction. United States v. Moore, 104 F.3d 377 (D.C. Cir. 1997).

Evidence insufficient to establish constructive possession. — Government presented insufficient evidence for a reasonable juror to infer beyond a reasonable doubt that appellant was familiar with the contents of the car and that he was specifically knowledgeable of the guns that were recovered from underneath the car's rear right seat. Thus, the government has failed to establish that appellant constructively possessed the seized weapons. Taylor v. United States, App. D.C., 662 A.2d 1368 (1995).

Intent to exercise dominion and control over gun not shown. — Appellant's conviction on gun charges was overturned where evidence was insufficient to prove constructive possession; an intent to exercise dominion and control over the gun could not be shown where the machine gun protruded less than one inch into the rear corner of the car where appellant was sitting, where there was no evidence that appellant had been in the car for a substantial period of time, and where the vehicle had no functional interior light. In re M.I.W., App. D.C., 667 A.2d 573 (1995).

Federal Firearms Owners' Protection Act defenses. — Trial judge erred by declining to instruct the jury with respect to the federal Firearms Owners' Protection Act (FOPA), 18 U.S.C. § 921 et seq., on which defendant based a part of his theory of the case, and by precluding defendant from presenting a defense based on the FOPA. Bieder v. United States, App. D.C., 662 A.2d 185 (1995).

Cited in Hood v. United States, App. D.C., 661 A.2d 1081 (1995); United States v. Holiday, Etc., 123 WLR 1957 (Super. Ct. 1995); In re M.A.M., 124 WLR 173 (Super. Ct. 1996); Harris v. United States, App. D.C., 668 A.2D 839 (1995); United States v. Dewalt, 92 F.3d 1209 (D.C. Cir. 1996); United States v. David, 96 F.3d 1477 (D.C. Cir. 1996); United States v. Smart, 98 F.3d 1379 (D.C. Cir. 1996), cert. denied, 520 U.S. 1128, 117 S. Ct. 1271, 137 L. Ed. 2d 349 (1997); Oliver v. United States, App. D.C., 682 A.2d 186 (1996); Holiday v. United States, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997); Goodall v. United States, App. D.C., 686 A.2d 178 (1996); Henderson v. United States, App. D.C., 687 A.2d 918 (1996); In re J.E.H., App. D.C., 689 A.2d 528 (1996); Washington v. United States, App. D.C., 689 A.2d 568 (1997); Willis v. United States, App. D.C., 692 A.2d 1380 (1997); In re D.A.J., App. D.C., 694 A.2d

860 (1997); Tucker v. United States, App. D.C., 704 A.2d 845 (1997); McGriff v. United States, App. D.C., 705 A.2d 282 (1997), cert. denied, — U.S. —, 118 S. Ct. 1542, 140 L. Ed. 2d 690 (1998); Littlejohn v. United States, App. D.C., 705 A.2d 1077 (1997); Bieder v. United States, App. D.C., 707 A.2d 781 (1998); Tucker v. United States, 708 A.2d 645 (D.C. 1998); Mills v. United States, App. D.C., 708 A.2d 1003 (1997); Thomas v. United States, App. D.C., 715 A.2d 121 (1998); Alexander v. United States, App. D.C., 718 A.2d 137 (1998); McDaniels v. United States, App. D.C., 718 A.2d 530 (1998); In re R.M.C., App. D.C., 719 A.2d 491 (1998).

§ 6-2312. Registration of certain firearms prohibited.

Possession of a prohibited weapon. — Charges of possession of an unregistered firearm under § 6-2311(a) and possession of a prohibited weapon under § 22-3214(a) do not merge where defendant possesses a gun, such as a machine gun, which cannot be registered under this section; possession of a prohibited weapon requires proof of a fact that the unregistered firearm offense does not. Turner v. United States, App. D.C., 684 A.2d 313 (1996).

Proof of non-registration. — The apparent effect of subsection (a)'s prohibition against issuance of a registration certificate may be that possession of a machine gun may violate § 6-2311(a); however, as a practical matter, this section relieves the government of having to prove non-registration by the usual means, and presumably allows the government to ask the trial court to take judicial notice of subsection (a)'s ban and rest on that as proof of non-registration. Turner v. United States, App. D.C., 684 A.2d 313 (1996).

§ 6-2318. Duties of registrants.

Section references. — This section is referred to in §§ 6-2319 and 24-495.2a.

§ 6-2319. Revocation of registration certificate.

Section references. — This section is referred to in § 24-495.2a.

§ 6-2322. Definition.

For the purposes of §§ 6-2322 through 6-2324, the term:

"Self-defense spray" means a mixture of a lacrimator including chloroacetophenone, alphacloracetophenone, phenylchloromethylketone, orthochlorobenazalm-alononitrile or oleoresin capsicum. (Sept. 24, 1976, D.C. Law 1-85, title II, § 212, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647; May 16, 1995, D.C. Law 10-255, § 10(a), 41 DCR 5193.)

Effect of amendments.

D.C. Law 10-255 validated a previously made punctuation change.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Editor's notes. — D.C. Act 10-302 which affected this section as set out in the 1995 Replacement Volume became Law 10-255, effective May 16, 1995. The historical citation for this section and the notes relating to D.C. Law 10-255 have been set out herein to clarify the law number and effective date of that act.

§ 6-2323. Possession of self-defense sprays.

(a) Notwithstanding the provisions of § 6-2302(7)(C), a person 18 years of age or older may possess and use a self-defense spray in the exercise of reasonable force in defense of the person or the person's property only if it is

propelled from an aerosol container, labeled with or accompanied by clearly written instructions as to its use, and dated to indicate its anticipated useful life.

(b) No person shall possess a self-defense spray which is of a type other than that specified in this act. (Sept. 24, 1976, D.C. Law 1-85, title II, § 213, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647; May 16, 1995, D.C. Law 10-255, § 10(b), 41 DCR 5193.)

Effect of amendments.
D.C. Law 10-255 validated a previously made capitalization change.

Legislative history of Law 10-255. — See note to § 6-2322.

Editor's notes. — D.C. Act 10-302 which affected this section as set out in the 1995 Replacement Volume became Law 10-255, effective May 16, 1995. The historical citation for this section and the notes relating to D.C. Law 10-255 have been set out herein to clarify the law number and effective date of that act.

Subchapter IV. Licensing of Firearms Businesses.

§ 6-2341. Manufacture of firearms, destructive devices or ammunition prohibited; requirement for dealer's license.

* * * * *

(c) Any license issued pursuant to this section shall be issued by the Metropolitan Police Department as a Class A Public Safety endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (1973 Ed., § 6-1841; Sept. 24, 1976, D.C. Law 1-85, title IV, § 401, 23 DCR 2464; Apr. 20, 1999, D.C. Law 12-261, § 2003(k)(1), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (c).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on Dece,ber 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

§ 6-2342. Qualifications for dealer's license; application; fee.

* * * * *

(d) Any license issued pursuant to this section shall be issued as a Class A Public Safety endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (1973 Ed., § 6-1842; Sept. 24, 1976, D.C. Law 1-85, title IV, § 402, 23 DCR 2464; Apr. 20, 1999, D.C. Law 12-261, § 2003(k)(2), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (d).

Legislative history of Law 12-261. — See note to § 6-2341.

Subchapter V. Sale and Transfer of Firearms, Destructive Devices, and Ammunition.

§ 6-2352. Permissible sales and transfers.

Prohibition on transfer of ammunition feeding devices. — For provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 4-191.

For temporary provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 2 of D.C. Law 11-35.

Section 3(b) of D.C. Law 11-35 provided that the act shall expire on the 225th day of its having taken effect.

For temporary provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 2 of the Prohibition on the Transfer of Firearms Emergency Act of 1995 (D.C. Act 11-58, May 18, 1995, 42 DCR 2574).

Subchapter VI. Possession of Ammunition.

§ 6-2361. Persons permitted to possess ammunition.

Intent to exercise dominion and control not shown. — Appellant's conviction on gun charges was overturned where evidence was insufficient to prove constructive possession; an intent to exercise dominion and control over the gun could not be shown where the machine gun protruded less than one inch into the rear corner of the car where appellant was sitting, where there was no evidence that appellant had been in the car for a substantial period of time, and where the vehicle had no functional interior light. In re M.I.W., App. D.C., 667 A.2d 573 (1995).

Ammunition charge severable from murder charge. — Introduction of evidence of murders committed with a .38 caliber weapon in a separate trial on illegal possession of .38 caliber ammunition would have created an extreme risk of prejudice no matter what instructions the judge gave regarding the limited use of evidence; thus ammunition charge should have been severed from murder charges. Bright v. United States, App. D.C., 698 A.2d 450 (1997).

Evidence sufficient to support conviction.

Evidence was more than sufficient to support the jury's conclusion that the defendant was in possession of drugs and firearms found under the hood of his car. Evidence sufficient to support conviction. United States v. Moore, 104 F.3d 377 (D.C. Cir. 1997).

Evidence insufficient to establish constructive possession. — Government presented insufficient evidence for a reasonable juror to infer beyond a reasonable doubt that appellant was familiar with the contents of the car and that he was specifically knowledgeable of the guns that were recovered from underneath the car's rear right seat. Thus, the government has failed to establish that appellant constructively possessed the seized weapons. Taylor v. United States, App. D.C., 662 A.2d 1368 (1995).

Federal Firearms Owners' Protection Act defenses. — Trial judge erred by declining to instruct the jury with respect to the federal Firearms Owners' Protection Act (FOPA), 18 U.S.C. § 921 et seq., on which defendant based a part of his theory of the case, and by precluding defendant from presenting a defense based on the FOPA. Bieder v. United States, App. D.C., 662 A.2d 185 (1995).

Cited in Hood v. United States, App. D.C., 661 A.2d 1081 (1995); United States v. Holiday, Etc., 123 WLR 1957 (Super. Ct. 1995); Harris v. United States, App. D.C., 668 A.2D 839 (1995); United States v. Dewalt, 92 F.3d 1209 (D.C. Cir. 1996); United States v. David, 96 F.3d 1477 (D.C. Cir. 1996); United States v. Smart, 98 F.3d 1379 (D.C. Cir. 1996), cert. denied, 520 U.S. 1128, 117 S. Ct. 1271, 137 L. Ed. 2d 349 (1997); Oliver v. United States, App. D.C., 682 A.2d 186 (1996); Holiday v. United States, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997); Turner v. United States, App. D.C., 684 A.2d 313 (1996); Goodall v. United States, App. D.C., 686 A.2d 178 (1996); Henderson v. United States, App. D.C., 687 A.2d 918 (1996); In re J.E.H., App. D.C., 689 A.2d 528 (1996); Washington v. United States, App. D.C., 689 A.2d 568 (1997); Willis v. United States, App. D.C., 692 A.2d 1380 (1997); Ko v. United States, App. D.C., 694 A.2d 73 (1997); In re D.A.J., App. D.C., 694 A.2d 860 (1997); Tucker v. United States, App. D.C., 704 A.2d 845 (1997); McGriff v. United States, App. D.C., 705 A.2d 282 (1997), cert. denied, — U.S. —, 118 S. Ct. 1542, 140 L. Ed. 2d 690 (1998); Littlejohn v. United States, App. D.C., 705 A.2d 1077 (1997); Hicks v. United States, App. D.C., 705 A.2d 636 (1997); Bieder v. United States, App. D.C., 707 A.2d 781 (1998); Tucker v. United States, 708

A.2d 645 (D.C. 1998); Mills v. United States, App. D.C., 708 A.2d 1003 (1997); Thomas v. United States, App. D.C., 715 A.2d 121 (1998); Alexander v. United States, App. D.C., 718 A.2d 137 (1998); McDaniels v. United States, App. D.C., 718 A.2d 530 (1998); In re R.M.C., App. D.C., 719 A.2d 491 (1998).

Subchapter VII. Miscellaneous Provisions.

§ 6-2375. Voluntary surrender of firearms, destructive devices, or ammunition; immunity from prosecution; determination of evidentiary value of firearm.

Prohibition on transfer of ammunition feeding devices. — For provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 4-191.

For temporary provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 2 of D.C. Law 11-35.

Section 3(b) of D.C. Law 11-35 provided that the act shall expire on the 225th day of its having taken effect.

For temporary prohibition on the transfer by the Metropolitan Police Department of any ammunition feeding device, see § 2 of the Prohibition on the Transfer of Firearms Emergency Act of 1995 (D.C. Act 11-58, May 18, 1995, 42 DCR 2574).

§ 6-2376. Penalties.

Rights of defendant. — A defendant charged with violation of a streamlined offense under the Omnibus Criminal Justice Reform Amendment Act still has the right to a trial with all due process rights attendant therewith. United States v. Moriba, 123 WLR 1213 (Super. Ct. 1995).

Jury trial not available. — The District of Columbia City Council has the legislative authority to classify the severity of crimes within the District. Defendants charged with any of the 40 streamlined offenses under the Omnibus Criminal Justice Reform Amendment Act are not entitled to a jury trial. United States v. Moriba, 123 WLR 1201 (Super. Ct. 1995).

Cited in Hood v. United States, App. D.C., 661 A.2d 1081 (1995); United States v. Bigelow, 123 WLR 401 (Super. Ct. 1995); Mills v. United States, App. D.C., 708 A.2d 1003 (1997); McDaniels v. United States, App. D.C., 718 A.2d 530 (1998).

§ 6-2376.1. Seizure and forfeiture of conveyances.

(a) For the purposes of this section, the term "owner" means a person with an ownership interest in the specific conveyance sought to be forfeited. The term "owner" does not include:

(1) A person with only a general unsecured interest in, or claim against, the conveyance;

(2) A bailee; or

(3) A nominee who exercises no dominion or control over the conveyance.

(b) Any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm, as that term is defined in § 6-2302, or in any manner use to facilitate a violation of § 6-2312 or § 22-3203 or § 22-3204, shall be seized and forfeited to the District of Columbia, provided that:

(1) No conveyance used by any person as a duly licensed common carrier in the course of transacting business as a licensed common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or has knowledge of a violation of this section; and

(2) The forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of, nor consented to, the illegal act giving rise to forfeiture.

(c) An innocent owner's interest in a conveyance which has been seized shall not be forfeited under this section.

(1) A person is an innocent owner if he or she establishes, by a preponderance of the evidence:

(A) That he or she did not know that a person or persons in the conveyance was transporting, possessing, or concealing any firearm or that the conveyance was involved in or was being used in the commission of any illegal act involving any firearm; or

(B) That, upon receiving knowledge of the presence of any illegal firearm in or on the conveyance or that the conveyance was being used in the commission of an illegal act involving a forfeiture, he or she took action to terminate the presence in or on the conveyance of the person, persons, or firearms.

(2)(A) A claimant who establishes a lack of knowledge under subsection (c)(1)(A) of this section shall be considered an innocent owner unless the government, in rebuttal, establishes the existence of facts and circumstances that should have created a suspicion that the conveyance was being or would be used for an illegal purpose. In that case, the claimant must establish that, in light of such facts and circumstances, he or she did all that reasonably could be expected to prevent the use of the conveyance in the commission of any such illegal act.

(B) A person who willfully blinds himself or herself to a fact shall be considered to have had knowledge of that fact.

(d) Except as otherwise expressly provided by this section, all seizures and forfeitures of conveyances under this section shall follow the procedures set forth in § 33-552. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 706a, as added June 3, 1997, D.C. Law 11-273, § 2, 43 DCR 6168; June 3, 1997, D.C. Law 11-274, § 19(b), 43 DCR 1232.)

Effect of amendments. — D.C. Law 11-273 added this section.

D.C. Law 11-274 added the exception at the beginning of (d).

Emergency act amendments. — For temporary addition of section, see § 2 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 2 of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and § 2 of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provides for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-273. — Law 11-273, the "Zero Tolerance for Guns Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-153, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-431 and transmitted to both Houses of Congress for its review. D.C. Law 11-273 became effective on June 3, 1997.

Legislative history of Law 11-274. — Law 11-274, the "Sex Offender Registration Act of 1996," was introduced in Council and assigned Bill No. 11-386, which was referred to the Committee on the Judiciary. The Bill was adopted in first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-510 and transmitted to both Houses of Congress for its review. D.C. Law 11-274 became effective on June 3, 1997.

Subchapter IX. Assault Weapons Manufacturing Strict Liability.

§ 6-2391. Definitions.

Effective date of Law 8-263. — Pursuant to the Court's holding in Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994), the Congressional review period for the Assault Weapon Manufacturing Strict Liability Act of 1990, began to run on November 19, 1991, and the act took effect on February 29, 1992.

Temporary repealer results in suspension of review period. — In the case of the filing of a referendum petition, the enactment of the emergency and temporary repealers resulted in the suspension of the review period pending final action on the Strict Liability Act, D.C. Law 8-263, by the District. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

Referendum withdraws act from Congressional consideration. — In the circumstance where legislation awaiting Congressional review is placed in jeopardy as a result of a referendum petition, the Home Rule Act withdraws it from Congressional consideration until its fate is known. If the legislation survives the referendum, the Act ensures that Congress will have a new thirty-day period within which to consider it, and the Act, therefore, defers Congressional review until after the result of the referendum is known. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

Failure of Congress to adopt resolution following referendum. — A new thirty-day period for Congressional review of the Strict Liability Act began the day after the result of the referendum repealing the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991, was announced. With that announcement, Congress was on notice that, absent a congressional resolution of disapproval, the Strict Liability Act, Law 8-263, would take effect by operation of law on the expiration of the temporary repealer. Because Congress failed to adopt such a resolution, the Strict Liability Act became law. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

§ 6-2392. Liability.

Effective date of Law 8-263. — Pursuant to the Court's holding in Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994), the Congressional review period for the Assault Weapon Manufacturing Strict Liability Act of 1990, began to run on November 19, 1991, and the act took effect on February 29, 1992.

Temporary repealer results in suspension of review period. — In the case of the filing of a referendum petition, the enactment of the emergency and temporary repealers resulted in the suspension of the review period pending final action on the Strict Liability Act, D.C. Law 8-263, by the District. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

Referendum withdraws act from Congressional consideration. — In the circumstance where legislation awaiting Congressional review is placed in jeopardy as a result of a referendum petition, the Home Rule Act withdraws it from Congressional consideration until its fate is known. If the legislation survives the referendum, the Act ensures that Congress will have a new thirty-day period within which to consider it, and the Act, therefore, defers Congressional review until after the result of the referendum is known. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

Failure of Congress to adopt resolution following referendum. — A new thirty-day period for Congressional review of the Strict Liability Act began the day after the result of the referendum repealing the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991, was announced. With that announcement, Congress was on notice that, absent a congressional resolution of disapproval, the Strict Liability Act, Law 8-263, would take effect by operation of law on the expiration of the temporary repealer. Because Congress failed to adopt such a resolution, the Strict Liability Act became law. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

§ 6-2393. Exemptions.

Effective date of Law 8-263. — Pursuant to the Court's holding in Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994), the Congressional review period for the Assault Weapon Manufacturing Strict Liability Act of 1990, began to run on November 19, 1991, and the act took effect on February 29, 1992.

Temporary repealer results in suspension of review period. — In the case of the filing of a referendum petition, the enactment

of the emergency and temporary repealers resulted in the suspension of the review period pending final action on the Strict Liability Act, D.C. Law 8-263, by the District. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

Referendum withdraws act from Congressional consideration. — In the circumstance where legislation awaiting Congressional review is placed in jeopardy as a result of a referendum petition, the Home Rule Act withdraws it from Congressional consideration until its fate is known. If the legislation survives the referendum, the Act ensures that Congress will have a new thirty-day period within which to consider it, and the Act, therefore, defers Congressional review until after the result of the referendum is known. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

Failure of Congress to adopt resolution following referendum. — A new thirty-day period for Congressional review of the Strict Liability Act began the day after the result of the referendum repealing the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991, was announced. With that announcement, Congress was on notice that, absent a congressional resolution of disapproval, the Strict Liability Act, Law 8-263, would take effect by operation of law on the expiration of the temporary repealer. Because Congress failed to adopt such a resolution, the Strict Liability Act became law. Bliley v. Kelly, 23 F.3d 507 (D.C. Cir. 1994).

CHAPTER 25. ADULT PROTECTIVE SERVICES.

§ 6-2501. Definitions.

Delegation of Authority Pursuant to Title XXIII (Section 2352(a)) of Public Law 97-35, the "Omnibus Budget Reconciliation Act, to Deliver Social Services Block Grant Funded Homemaker Services for Individuals and Families who are in Need of or Receiving Protective Services." — See Mayor's Order 97-101, May 28, 1997 (44 DCR 3529).

CHAPTER 27. CIVIL INFRACTIONS.

Subchapter I. Purposes; Definitions; Administrative Law Judges and Attorney Examiners; Sanctions; Regulations

Subchapter I. Purposes; Definitions; Administrative Law Judges and Attorney Examiners; Sanctions; Regulations.

§ 6-2701. Purpose.

Section references. — This section is referred to in §§ 6-3636, 25-130, 32-366, 32-1353, 47-2853.29, and 47-2862.

Establishment of District of Columbia Board of Appeals and Review. — See Mayor's Order 86-50, March 31, 1986.

Establishment of District of Columbia Board of Appeals and Review. — See Mayor's Order 96-27, March 5, 1996 (43 DCR 1367).

Cited in Concord Enters., Inc. v. Binder, App. D.C., 710 A.2d 219 (1998).

§ 6-2702. Definitions.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

§ 6-2703. Administrative law judges and attorney examiners.

* * * * *

(b) Administrative law judges or attorney examiners shall have the following powers:

* * * * *

(5) Permitting the payment of monetary fines, penalties, and hearing and inspection costs in excess of $50 in monthly installments over a period not greater than 6 months and allowing a fee of 1% per month of the outstanding amount owed by a respondent for the installment service;

(6) Suspending all or part of any fine or penalty imposed on grounds of past compliance or past good faith attempts to comply with applicable laws and regulations, or upon condition that the respondent correct the infraction by a date certain; and

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 14, 43 DCR 530.)

Section references. — This section is referred to in §§ 6-3460, 25-130, 28-3902, and 32-366.

Effect of amendments. — D.C. Law 11-110 validated previously made stylistic changes in (b)(5) and (6).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 6-2704. Monetary sanctions.

Section references. — This section is referred to in §§ 6-2712, 6-2713, 6-3460, 25-130, and 32-366.

District of Columbia Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Proposed Rulemaking Approval Resolution of 1997. — Proposed Resolution 12-0113, the "District of Columbia Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Proposed Rulemaking Approval Resolution of 1997" was deemed approved, effective Jan. 7, 1997.

§ 6-2705. Regulations.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

§ 6-2706. Summary action.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

Due process not violated. — District of Columbia Department of Consumer and Regulatory Affairs' interim suspension of a building permit did not violate the permit holder's due process rights where the permit holder had a history of non-compliance with environmental, building, and zoning laws, there was contaminated soil at the site, and more information was needed, and where the permit holder failed to pursue any of the post-suspension remedies available to it. Tri-County Indus. v. District of Columbia, 932 F. Supp. 4 (D.D.C. 1996), aff'd, in part and vacated in part, Tri-County Indus. v. District of Columbia (D.C. Cir. 1997).

Remedies. — A permit holder whose permit is suspended may seek any of the following relief: (1) an expedited administrative hearing within 72 hours of suspension; (2) direct review of the suspension in the D.C. Court of Appeals pursuant to § 1-1510; and (3) injunctive relief in D.C. Superior Court or a writ of mandamus in the D.C. Court of Appeals. Tri-County Indus. v. District of Columbia, 932 F. Supp. 4 (D.D.C. 1996), aff'd, in part and vacated in part, Tri-County Indus. v. District of Columbia (D.C. Cir. 1997).

Subchapter II. Procedures.

§ 6-2711. Notice of infraction.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

§ 6-2712. Answer.

Section references. — This section is referred to in §§ 6-2704, 6-3460, 25-130, and 32-366.

§ 6-2713. Hearing.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

§ 6-2714. Final decision.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

§ 6-2715. Service.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

Subchapter III. Administrative Review.

§ 6-2721. Jurisdiction to hear appeal.

Section references. — This section is referred to in §§ 6-2722, 6-3460, 25-130, and 32-366.

§ 6-2722. Right to administrative appeal and costs of appeal.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

§ 6-2723. Scope of review.

Section references. — This section is referred to in §§ 6-3460, 25-130, and 32-366.

CHAPTER 28. AIDS HEALTH CARE.

§ 6-2805. Confidentiality of medical records and information.

Disclosure to spouse. — District employees at mental hospital owed husband no duty to disclose wife's HIV-positive test results. On the contrary, the hospital staff owed a duty to wife to refrain from disclosing that information to anyone, including her husband, without her written consent or court order. N.O.L. v. District of Columbia, App. D.C., 674 A.2d 498 (1995).

CHAPTER 29. LITTER CONTROL ADMINISTRATION.

Sec.
6-2907. Penalties for violations.

§ 6-2903. Investigation and notice of nuisance.

Fine may be imposed when owner informed of action to abate. — This section contemplates that a fine may be imposed at the same time that the property owner is informed of the action necessary to abate the nuisance; due process does not require the property owner to be given notice of the violation and an opportunity to abate the nuisance before a civil fine may be imposed. Bruno v. District of Columbia Bd. of Appeals & Review, App. D.C., 665 A.2d 202 (1995).

§ 6-2907. Penalties for violations.

* * * * *

(d-1) The Mayor or hearing examiner may suspend or refuse to reissue any permit or license which authorizes the respondent to engage in the activity to which the sanction relates, or which otherwise substantially relates to the violation, if the respondent fails to pay any fines, penalties, interest, costs, or expense imposed pursuant to this chapter. Suspension of the permit or license shall continue until payment is made.

* * * * *

(f)

* * * * *

(3) If any civil fine, penalty, or cost is unpaid 6 months after the date of the final notice of the charges, the subject property may be sold for the unpaid civil fine, penalty, cost, and interest due the District government at the next tax sale conducted pursuant to § 47-1301 in the same manner and under the same conditions as property sold for delinquent general taxes.

* * * * *

(May 11, 1996, D.C. Law 11-118, § 8, 43 DCR 1191; Apr. 9, 1997, D.C. Law 11-198, § 202, 43 DCR 4569.)

Effect of amendments.

D.C. Law 11-118 inserted (d-1).

D.C. Law 11-198 inserted "conducted pursuant to § 47-1301" in (f)(3).

Temporary amendment of section. — Section 202 of D.C. Law 11-226 amended (f)(3) to read as follows:

"(f)(3) If any civil fine, penalty, or cost is unpaid 6 months after the date of the final notice of the charges, the subject property may be sold for the unpaid civil fine, penalty, cost, and interest due the District government at the next tax sale conducted pursuant to § 47-1301 in the same manner and under the same conditions as property sold for delinquent general taxes."

Section 1001 of D.C. Law 11-226 provided that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see § 202 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), see § 202 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 202 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for the application of the act.

Section 1001 of D.C. Act 11-429 provides for the application of the act.

Legislative history of Law 11-118. — Law 11-118, the "Clean Hands Before Receiving a License or Permit Act of 1996," was introduced in Council and Assigned Bill No. 11-260, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 1996, and February 26, 1996, respectively. Signed by the mayor on February 26, 1996, it was assigned Act No. 11-222 and transmitted to both Houses of Congress for its review. D. C. Law 11-118 became effective on May 11, 1996.

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the "Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Application of provisions of Law 11-198. — Section 1001 of D.C. Law 11-198 provided that Titles I, II, III, V, and VI and §§ 405 and 406 of the act shall apply after September 30, 1996.

Revised schedule of fines approved. — Proposed Resolution 12-0015, the "Litter Control Revised Schedule of Fines Approval Resolution of 1997," was deemed approved, effective May 8, 1997.

CHAPTER 29A. ILLEGAL DUMPING ENFORCEMENT.

Sec.
6-2911. Definitions.
6-2912. Prohibition and penalties.

§ 6-2911. Definitions.

For the purposes of this chapter, the term:

(1) "Commercial purpose" means for the purpose of a person's economic gain.

(1A) "Dispose" means to discharge, deposit, dump, or place any solid waste in the District of Columbia.

* * * * *

(2A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may:

(A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

* * * * *

(3A) "Medical waste" means solid waste from medical research, medical procedures, or pathological, industrial, or medial laboratories. Medical waste includes, but is not limited to, the following types of solid waste:

(A) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(B) Pathological waste, including tissues, organs, and body parts that are removed during surgery or autopsy;

(C) Human blood waste and products of blood, including serum, plasma, and other blood components;

(D) Sharps that have been used in patient care or medical research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades;

(E) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;

(F) Waste from surgery or autopsy that was in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;

(G) Laboratory waste from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that was in contact with infectious agents, including slides, and cover slips, disposable gloves, laboratory coats, and aprons;

(H) Dialysis waste that was in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;

(I) Discarded medical equipment and parts that were in contact with infectious agents;

(J) Biological waste and discarded materials contaminated with blood, excretion, exudates and secretion from human beings or animals who are isolated to protect others from communicable diseases; and

(K) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Mayor to pose a threat to human health or the environment.

* * * * *

(6) "Solid waste" means combustible or incombustible refuse. Solid waste includes dirt, sand, sawdust, gravel, clay, loam, stone, rocks, rubble, building rubbish, shavings, trade or household waste, refuse, ashes, manure, vegetable matter, paper, dead animals, garbage or debris of any kind, any other organic or inorganic material or thing, or any other offensive matter. (Nov. 20, 1993, D.C. Law 10-62, § 2, 40 DCR 7237; May 20, 1994, D.C. Law 10-117, § 2, 41 DCR 524; May 9, 1995, D.C. Law 11-12, § 3(a), 42 DCR 1265; Apr. 18, 1996, D.C. Law 11-110, § 15(a), 43 DCR 530; Apr. 29, 1998, D.C. Law 12-90, § 2(a), 45 DCR 1308.)

Effect of amendments. — D.C. Law 11-12 substituted "in the District of Columbia" for "into or on any land or water" in (1).

D.C. Law 11-110 validated a previously made punctuation change in (6).

D.C. Law 12-90 added a new (1), and redesignated former (1) as (1A); inserted (2A) and (3A); and rewrote the first sentence of (6).

Legislative history of Law 11-12. — Law 11-12, the "Recycling Fee and Illegal Dumping Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-15, which was retained by Council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on March 6, 1995, it was assigned Act No. 11-23 and transmitted to both Houses of Congress for its review. D.C. Law 11-12 became effective on May 9, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 4, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-90. — Law 12-90, the "Illegal Dumping Enforcement Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-167, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-263 and transmitted to both Houses of Congress for its review. D.C. Law 12-90 became effective on April 29, 1998.

§ 6-2912. Prohibition and penalties.

(a) It shall be unlawful for any person to dispose or cause or permit the disposal of solid waste, hazardous waste, or medical waste in or upon any street, lot, park, public place, or any other public or private area, whether or not for a commercial purpose, unless the site is authorized for the disposal of solid waste, hazardous waste or medical waste by the Mayor.

(b)(1) Any person who violates subsection (a) of this section shall be liable to arrest.

(2) Any person who disposes of solid waste which is neither hazardous nor medical waste in violation of subsection (a) of this section, shall be guilty of a misdemeanor, and shall be subject to a fine not to exceed $1,000 for each offense, or shall be imprisoned for a period not to exceed 90 days, or both. Any person who disposes of solid waste for a commercial purpose shall be guilty of a felony, and shall be subject to a fine for each offense not to exceed $25,000, or shall be imprisoned for a period not to exceed 5 years, or both.

(3) Any person who knowingly disposes of hazardous waste in violation of subsection (a) of this section shall be guilty of a felony, and subject to a fine for each offense not to exceed $25,000, and a term of imprisonment not to exceed 5 years.

(4) Any person who knowingly disposes of medical waste in violation of subsection (a) of this section shall be guilty of a felony, and subject to a fine for each offense not to exceed $25,000, and a term of imprisonment not to exceed 5 years.

* * * * *

(e) The Mayor is authorized to establish and collect a reasonable fee for the cost of towing and storing seized motor vehicles. A storage fee shall not be charged for the first 24-hour period following the seizure of a motor vehicle. If a person is found not liable for a violation of this chapter, the Mayor shall waive any towing and storage fees assessed under this chapter and refund any penalties paid.

* * * * *

(May 9, 1995, D.C. Law 11-12, § 3(b), 42 DCR 1265; Feb. 27, 1996, D.C. Law 11-94, § 13, 42 DCR 7172; Apr. 18, 1996, D.C. Law 11-110, § 15(b), 43 DCR 530; Apr. 29, 1998, D.C. Law 12-90, § 2(b), 45 DCR 1308.)

Effect of amendments. — D.C. Law 11-12 substituted "building, place, or other area" for "public place, or other area" in the first sentence of (a).

D.C. Law 11-94 substituted "a solid waste facility owned or operated by the District of Columbia, or is a solid waste facility which has obtained a solid waste facility permit from the Mayor" for "authorized for the disposal of solid waste by the Mayor" in the first sentence of (a).

D.C. Law 11-110 validated a previously made deletion of "to" preceding "refund" in the last sentence of (e).

D.C. Law 12-90 rewrote (a) and (b).

Temporary amendment of section.

D.C. Law 11-80 substituted "a solid waste facility owned or operated by the District of Columbia, or is a solid waste facility which has obtained a solid waste facility permit from the Mayor" for "authorized for the disposal of solid waste by the Mayor" in the first sentence of (a).

Section 17(b) of D.C. Law 11-80 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Solid Waste Facility Permit Act of 1995, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see

§ 13 of the Solid Waste Facility Permit Emergency Act of 1995 (D.C. Act 11-144, October 23, 1995, 42 DCR 6044).

Legislative history of Law 11-12. — See note to § 6-2911.

Legislative history of Law 11-80. — Law 11-80, the "Solid Waste Facility Permit Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-456. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 22, 1995, it was assigned Act No. 11-156 and transmitted to both Houses of Congress for its review. D.C. Law 11-80 became effective on February 6, 1996.

Legislative history of Law 11-94. — Law 11-94, the "Solid Waste Facility Permit Act of 1995," was introduced in Council and assigned Bill No. 11-036, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-177 and transmitted to both Houses of Congress for its review. D.C. Law 11-94 became effective on February 27, 1996.

Legislative history of Law 11-110. — See note to § 6-2911.

Legislative history of Law 12-90. — See note to § 6-2911.

Delegation of authority pursuant to the Illegal Dumping Enforcement Act of 1994. — See Mayor's Order 96-160, October 31, 1996 (43 DCR 6370).

CHAPTER 31. SECURITY AND FIRE ALARM SYSTEMS REGULATIONS.

Sec.
6-3105. Licensing of alarm agents.

§ 6-3105. Licensing of alarm agents.

* * * * *

(g) Any license issued pursuant to this section shall be issued as a Class A Inspected Sales and Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Sept. 26, 1980, D.C. Law 3-107, § 6, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(g), 35 DCR 1051; Apr. 20, 1999, D.C. Law 12-261, § 2003(l), 46 DCR 3142.)

Section references. — This section is referred to in § 47-2853.4.

Effect of amendments. — D.C. Law 12-261 added (g).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

CHAPTER 34. SOLID WASTE MANAGEMENT AND MULTI-MATERIAL RECYCLING.

Subchapter I. General Provisions.

Sec.
6-3408. Establishment of Office of Recycling.
6-3415. Recycling surcharge and collection fee.
6-3415.1. Tire recycling fee.
6-3417.1. Enforcement.

Subchapter II. Solid Waste Facility Permits.

Sec.
6-3451. Definitions.
6-3452. Open solid waste facilities prohibited.
6-3453. Permits required.
6-3454. Application for permits.

Subchapter I. General Provisions.

Editor's notes. — Because of the codification of the provisions of D.C. Laws 11-80 and 11-94 as subchapter II of this chapter, the preexisting text of Chapter 34, which includes §§ 6-3401 through 6-3423 has been designated as subchapter I of this chapter. Accordingly, all references to "this chapter" in §§ 6-3401 through 6-3423, should be changed to be "this subchapter."

§ 6-3401. Council findings.

Delegation of Authority Pursuant to D.C. Law 10-251, the "Solid Waste Facility Permit Temporary Act of 1994." — See Mayor's Order 95-754, May 19, 1995.

Availability of funds. — The Omnibus Budget Support Emergency Act of 1995 (OBSEA) did not reflect a legislative intention to restrict the Mayor's authority to appropriate funds and does not require the Mayor to maintain the curbside collection after determining insufficient funds. District of Columbia v. Sierra Club, App. D.C., 670 A.2d 354 (1996).

Cited in Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).

§ 6-3407. Mandatory source separation program.

Judicial review. — The presumption of judicial reviewability of this section stands unrebutted because the section requires the Mayor to provide curbside recycling collection services, and the Mayor's acts or omissions can readily be evaluated by reference to that obligation and because this section contains nothing that explicitly or implicitly precludes judicial review. District of Columbia v. Sierra Club, App. D.C., 670 A.2d 354 (1996).

§ 6-3408. Establishment of Office of Recycling.

* * * * *

(b) The duties of the Office shall include to:

* * * * *

(11) Serve as a liaison between the District and neighboring jurisdictions in developing a regional recycling and waste reduction campaign;

(12) Develop a semi-annual household hazardous waste collection day to educate citizens on household hazardous waste and convenient and safe disposal through separate collection; and

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 16, 43 DCR 530.)

Effect of amendments.
D.C. Law 11-110 validated previously made stylistic changes in (b)(11) and (12).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned

Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 6-3410. Multi-material recycling buy-back centers and intermediate processing facilities.

Authority to seek review of Contract Appeals Board decisions. — The contracting power of the Director of the Department of Public Works pursuant to §§ 6-3410 and 6-3411 and Mayor's Order 89-160, which delegates the certain aspects of the Mayor's authority under those sections to the Director of the Department of Public Works, does not give the Director of the Department of Public Works the authority to seek judicial review of Contract Appeals Board decisions relating to those contracts. Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).

§ 6-3411. Contracting authority.

Authority to seek review of Contract Appeals Board decisions. — The contracting power of the Director of the Department of Public Works pursuant to §§ 6-3410 and 6-3411 and Mayor's Order 89-160, which delegates the certain aspects of the Mayor's authority under those sections to the Director of the Department of Public Works, does not give the Director of the Department of Public Works the authority to seek judicial review of Contract Appeals Board decisions relating to those contracts. Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).

§ 6-3415. Recycling surcharge and collection fee.

(a)(1) The Mayor shall impose a recycling surcharge on all persons who dispose of solid waste through the solid waste disposal system of the District to offset the cost of developing new and additional methods of solid waste management.

(2) The Mayor shall provide a credit to apply to the recycling surcharge imposed by this subsection for persons who pay the fee imposed by subsection (b) of this section which credit shall be equivalent to the recycling surcharge imposed by this subsection.

(b) The Mayor shall impose a collection fee, for the privilege of collecting solid waste as a commercial activity, on all persons licensed to collect solid waste in the District. The collection fee shall be equivalent to the recycling surcharge authorized in subsection (a) of this section.

(c) Persons subject to the recycling surcharge or the collection fee imposed pursuant to this section shall:

(1) Submit periodic reports to the Mayor at the times specified by regulation; the reports shall contain all information the Mayor considers reasonably necessary to determine compliance with this subchapter, including the quantity of solid waste collected and disposed of; and

(2) Retain records of solid waste collected and disposed of for 3 years or such other period of time as the Mayor may prescribe.

(d) For the purpose of ensuring compliance with this section, the Mayor may periodically inspect all records, documents, or data compilations in the possession or control of persons subject to the recycling surcharge or collection fee required by this section. Inspections shall take place during normal operating hours.

(e) Failure to maintain records, submit periodic reports, or pay the recycling surcharge or collection fee required by this section may result in the imposition of one or more of the following penalties:

(1) A $25,000 fine;

(2) An assessment of twice the amount of the recycling surcharge or fee due; or

(3) Suspension or revocation of a solid waste collector's license issued pursuant to section 606(a) of Chapter 3 of Title 8 of the District of Columbia Health Regulations, issued June 29, 1971 (Reg. 71-21; 21 DCMR 710).

(f) Money generated from the recycling surcharge and collection fee required by this section shall be used to fund recycling activities in the District, no more than 25% of which shall go to fund the recycling educational and promotional activities of the Environmental Planning Commission.

(g) On January 15th of each year the Mayor shall submit to the Council the following:

(1) An annual report on all income received from the recycling surcharge and collection fee during the previous fiscal year;

(2) A line-item report on all disbursements for recycling activities during the previous fiscal year; and

(3) A proposed plan for the use of all monies for recycling activities for the current fiscal year.

(h) The proposed plan submitted by the Mayor pursuant to subsection (g)(3) of this section shall be submitted to the Council for approval, in whole or in part, by resolution. Expenditure for recycling activities shall be subject to Council approval of the proposed plan. (Mar. 16, 1989, D.C. Law 7-226, § 16, 36 DCR 595; Nov. 20, 1993, D.C. Law 10-62, § 7(b), 40 DCR 7237; May 20, 1994, D.C. Law 10-117, § 8(b), 41 DCR 524; Sept. 24, 1994, D.C. Law 10-178, § 3(h), 41 DCR 5205; May 9, 1995, D.C. Law 11-12, § 2(a), 42 DCR 1265; Apr. 18, 1996, D.C. Law 11-110, § 63, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 15, 44 DCR 1271.)

Section references. — This section is referred to in §§ 6-3415.1, 6-2905, 6-2907, 6-2915, 6-3411, 6-3417a, 6-3422, and 6-3457.

Effect of amendments.

D.C. Law 11-12 rewrote this section.

D.C. Law 11-110 validated previously made technical corrections to D.C. Law 10-178.

D.C. Law 11-255 validated a previously made correction of a typographical error in (f).

Legislative history of Law 11-12. — See note to § 6-3415.1.

Legislative history of Law 11-110. — See note to § 6-3408.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Delegation of Authority Pursuant to D.C. Law 11-12, the "D.C. Recycling Fee and Illegal Dumping Amendment Act of 1995." — See Mayor's Order 95-89, June 22, 1995.

§ 6-3415.1. Tire recycling fee.

The Mayor shall collect a recycling fee of $2 for each new motor vehicle tire sold in the District of Columbia. The proceeds from this fee shall be included with the recycling surcharge and collection fees under § 6-3415. Persons subject to this recycling fee shall not be responsible for requirements under

§ 6-3415 (c). (Mar. 16, 1989, D.C. Law 7-226, § 16a, as added May 9, 1995, D.C. Law 11-12, § 2(b), 42 DCR 1265.)

Effect of amendments. — D.C. Law 11-12 added this section.

Legislative history of Law 11-12. — Law 11-12, the "Recycling Fee and Illegal Dumping Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-15, which was retained by Council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on March 6, 1995, it was assigned Act No. 11-23 and transmitted to both Houses of Congress for its review. D.C. Law 11-12 became effective on May 9, 1995.

Delegation of Authority Pursuant to D.C. Law 11-12, the "D.C. Recycling Fee and Illegal Dumping Amendment Act of 1995." — See Mayor's Order 95-89, June 22, 1995.

§ 6-3417.1. Enforcement.

The provisions of this subchapter shall apply only to the extent of funds available through the recycling surcharge in § 6-3415 or appropriated monies allocated for solid waste management activities. (Mar. 16, 1989, D.C. Law 7-226, § 18a, as added Sept. 26, 1995, D.C. Law 11-52, § 804, 42 DCR 3684.)

Effect of amendments. — D.C. Law 11-52 added this section.

Emergency act amendments. — For temporary addition of section, see § 504 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 804 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Subchapter II. Solid Waste Facility Permits.

§ 6-3451. Definitions.

For the purpose of this subchapter, the term:

(1) "Composting facility" means any location or structure which uses a microbial process to convert organic material, including wood, paper, mulch, or yard or food waste into a soil amendment.

(2) "Construction and demolition wastes" means the waste building materials and rubble resulting from construction, remodeling, repair, and demolition operation on houses, commercial buildings, pavements, and other structures.

(3) "Existing solid waste facility" means a solid waste facility in construction, including site preparation, or operating on March 23, 1995.

(4) "Final disposal" means depositing or placing solid waste for its final location.

(5) "Intermediate materials recycling facility" means a fully enclosed structure used for the receipt, separation, storage, conversion, baling, briquetting, crushing, compacting, grinding, shredding, or processing of paper, metal, glass, plastics, tires, bulk waste, or other nonbiodegradable recyclable materials for the purpose of reutilization of such materials. The term "intermediate materials recycling facility" shall not include a facility used for the storage or processing of biodegradable materials, construction and demolition

wastes, white goods, and hazardous substances, as defined in § 6-982(4), and the rules and regulations pursuant thereto.

(6) "Open solid waste facility" means any privately owned or operated solid waste disposal or solid waste handling facility where solid waste is stored or processed outside of a fully enclosed building or structure.

(7) "Person" means any individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or any other private entity.

(8) "Recyclable material" means material which would otherwise become solid waste, and that may be collected, separated, or processed and returned to the economic mainstream as a raw material or product.

(9) "Residue" means the solid waste, as measured by weight, requiring disposal after recyclable material is removed during or after processing.

(10) "Solid waste" means garbage, refuse, construction and demolition waste or any other waste product, including solid, liquid, semisolid, or contained gaseous material, resulting from commercial, industrial, or government operation, or residential or community activity.

(11) "Solid waste disposal facility" means any facility where solid waste is discharged, deposited, tipped, dumped, or placed for final disposal, including an incinerator, waste-to-energy facility, rubble fill, or landfill.

(12) "Solid waste facility" means any privately owned or operated solid waste disposal facility or solid waste handling facility, which accepts solid waste that is not the incidental by-product of the facility's manufacturing or operational processes.

(13) "Solid waste handling facility" means any facility where solid waste temporarily is deposited, or placed for processing, at any time prior to its final disposal at a solid waste disposal facility.

(14) "Source separated" means the end result when recyclable material is separated from solid waste at its point of origin for separate collection and processing.

(15) "Substantially alter" means to make any physical modification to a solid waste facility which increases or decreases the solid waste facility's maximum annual capacity, by more than 10% per year, as indicated in the solid waste facility's solid waste facility permit, or in any way alters or modifies the method by which the waste is processed or disposed, or which increases the amount of any air pollutant not previously emitted.

(16) "Abate" means to control disease vectors including rats and other vermin.

(17) "Arterial road" means a traffic route of 4 or more lanes with traffic controlled by traffic signal lights.

(18) "Best Available Control Technology" or "BACT" means measures, processes, methods, systems, or techniques to contain the emission of odors and air and liquid pollutants through procedures including enclosing processes or systems to eliminate emissions, and by collecting, capturing or treating pollutants before release from a process, stack, storage or fugitive emissions point.

(19) "Facility" menas any building, structure, or portion of a site where solid waste is handled or stored.

(20) "Hazardous waste" means any waste defined as hazardous in § 6-702(2).

(21) "Infectious waste" shall include, but is not limited to, the following types of solid waste:

(A) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(B) Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy;

(C) Waste human blood and products of blood, including serum, plasma, and other blood components;

(D) Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades;

(E) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;

(F) Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;

(G) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats and aprons;

(H) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;

(I) Discarded medical equipment and parts that were in contact with infectious agents;

(J) Biological waste and discarded materials contaminated with blood, excretion, exudates or secretion from human beings or animals who are isolated to protect others from communicable diseases; and

(K) Any other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Department of Health to post a threat to human health or the environment.

(22) "Operation area" means any area where solid waste handling or related activities including storage, heavy equipment operations, truck idling, covering, uncovering, cleaning, queuing or parking occurs.

(23) "Radioactive hazardous waste" means any waste which contains or is contaminated with low level radioactive waste material emitting primarily gamma or beta radiation registering above normal background levels.

(24) "Residential street" means any street on which 50% or more of the street frontage is used for residential purposes, for residential and non-business property, or is zoned as residential property. The designation of a street as a residential street shall be determined block-by-block.

(25) "Site" means the total area of any lot or lots that are partially or completely occupied by a solid waste handling facility or its operations area or any lot or lots owned or leased by the owner or operator of a solid waste

handling facility that are adjacent to a lot or lots that are partially or completely devoted to solid waste handling operations.

(26) "Tracking" means the deposit of a trail of liquid, liquid waste, muck, dust or of any garbage on public space by vehicles entering and exiting solid waste facilities. (Feb. 27, 1996, D.C. Law 11-94, § 2, 42 DCR 7172; _____, 1999, D.C. Law 12-(Act 12-624), § 2(a), 46 DCR 3435.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-624) inserted "construction and demolition waste" in (10); and added (16) through (26).

Temporary addition of subchapter. — Sections 2-11 of D.C. Law 10-251 enacted this subchapter.

Section 16(b) of D.C. Law 10-251 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Solid Waste Facility Permit Amendment Act of 1995, whichever occurs first.

Sections 2 through 11 of D.C. Law 11-80 enacted this subchapter.

Section 17(b) of D.C. Law 11-80 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Solid Waste Facility Permit Act of 1995, whichever occurs first.

Temporary amendment of section. — Section 2 of D.C. Law 12-120 inserted "construction and demolition waste" in (10); and added (16) through (20).

Section 4(b) of D.C. Law 12-120 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of subchapter, see §§ 2-11 of the Solid Waste Facility Permit Emergency Act of 1994 (D.C. Act 10-384, December 28, 1994, 42 DCR 45).

For temporary addition of subchapter, see §§ 2 through 11 of the Solid Waste Facility Permit Emergency Act of 1995 (D.C. Act 11-144, October 23, 1995, 42 DCR 6038).

For temporary amendment of section, see § 2(a) and (b) of the Solid Waste Facility Permit Emergency Amendment Act of 1998 (D.C. Act 12-296, March 4, 1998, 45 DCR 1769), and § 2(a) of the Solid Waste Facility Permit Second Emergency Amendment Act of 1998 (D.C. Act 12-623, February 1, 1999, 45 DCR 1364).

Legislative history of Law 10-251. — Law 10-251, the "Solid Waste Facility Permit Temporary Act of 1994," was introduced in Council and assigned Bill No. 10-835. The Bill was adopted on first and second readings on December 6, 1994, and January 3, 1995, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-398 and transmitted to both Houses of Congress for its review. D.C. Law 10-251 became effective on March 23, 1995.

Legislative history of Law 11-80. — Law 11-80, the "Solid Waste Facility Permit Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-456. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 22, 1995, it was assigned Act No. 11-156 and transmitted to both Houses of Congress for its review. D.C. Law 11-80 became effective on February 6, 1996.

Legislative history of Law 11-94. — Law 11-94, the "Solid Waste Facility Permit Act of 1995," was introduced in Council and assigned Bill No. 11-036, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-177 and transmitted to both Houses of Congress for its review. D.C. Law 11-94 became effective on February 27,1996.

Legislative history of Law 12-120. — Law 12-120, the "Solid Waste Facility Permit Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-546. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the Mayor on March 18, 1998, it was assigned Act No. 12-319 and transmitted to both Houses of Congress for its review. D.C. Law 12-120 became effective on June 11, 1998.

Legislative history of Law 12-(D.C. Act 12-624). — Law 12-(D.C. Act 12-624), the "Solid Waste Facility Permit Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-624 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-624) became effective on _____.

Delegation of Authority Pursuant to D.C. Law 10-251, the "Solid Waste Facility Permit Temporary Act of 1994." — See Mayor's Order 95-754, May 19, 1995.

Delegation of Authority Pursuant to D.C. Law 11-94, the "District of Columbia Solid Waste Facility Permit Act of 1995." — See Mayor's Order 98-53, April 15, 1998 (45 DCR 2700).

§ 6-3452. Open solid waste facilities prohibited.

No person shall operate an open solid waste facility in the District. (Feb. 27, 1996, D.C. Law 11-94, § 3, 42 DCR 7172.)

Temporary addition of subchapter. — See note to § 6-3451.

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

§ 6-3453. Permits required.

(a) No person shall construct or operate a solid waste facility in the District of Columbia which accepts solid waste for a fee except in accordance with a solid waste facility permit issued for that solid waste facility by the Mayor.

(b)(1) An existing solid waste facility shall cease construction, including site preparation or operation, by June 30, 1995, unless the Mayor has issued an interim operating permit for the facility pursuant to paragraph (2) of this subsection.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the Mayor may issue an interim operating permit with terms and conditions of operation for an existing solid waste facility if the Mayor has received a completed solid waste facility permit application for that facility by June 30, 1995, and the payment of an initial permit fee of $10,000.

(B) The Mayor may issue an interim operating permit with terms and conditions of operation for an existing solid waste facility that receives and processes construction and demolition waste exclusively if the Mayor has received a completed solid waste facility permit application for that facility by March 1, 1996, and the payment of an initial permit fee of $10,000.

(3) An interim operating permit shall be valid until such time as a final disposition of the solid waste facility permit application has been made by the Mayor, unless the final disposition of the application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(4) In addition to any other remedies available at law or equity, the Mayor may immediately suspend or revoke an interim operating permit and order closure of the solid waste facility if the Mayor finds that the facility is operating (i) in violation of its interim operating permit; (ii) in violation of health, safety, environmental, and zoning laws, rules, and regulations, including such rules and regulations as may be issued by the Mayor pertaining to solid waste facilities operating under interim operating permits; (iii) in a manner that endangers human health, the public welfare, or the environment; or (iv) after failure of the applicant to furnish information reasonably required or requested in order to process the application.

(c) A solid waste facility shall not be substantially altered unless the Mayor has given prior approval for the alteration by issuing to the solid waste facility a modification of the solid waste facility's existing permit and payment of the modification application fee by the applicant.

(d) An existing solid waste facility, while operating under an interim operating permit, shall not be substantially altered except as expressly authorized by the Mayor.

(e)(1) The Mayor may issue a solid waste facility permit with terms and conditions of operation after the Mayor has received a completed solid waste facility permit application and made a final disposition of the solid waste facility permit application.

(2) The Mayor may, in accordance with standards to be established by regulation, issue, renew, suspend, revoke, or deny a solid waste facility permit, and determine, vary, or modify its terms and conditions. No solid waste facility permit shall be issued or renewed until the Mayor has determined that the solid waste facility is operating, or will operate, in full compliance with environmental, health, safety, and zoning laws, rules, and regulations and that the solid waste facility will not endanger human health, the public welfare, or the environment. A contrary determination shall allow the Mayor to order closure of an existing facility.

(f) Permits issued under subsection (e) of this section shall be valid for a period not to exceed 3 years from the date of issuance.

(g) Each permit issued under this section shall be limited to one site and one person and shall not be transferable to another site, facility, or person.

(h) No permit shall be required under this section for the following:

(1) An intermediate materials recycling facility which produces no more than an average monthly residue of 20%;

(2) A composting facility;

(3) The temporary storage of sand, salt, milled asphalt, dirt, street sweepings, or other nonputrescible material resulting from a municipal operation; or

(4) The storage of hazardous waste as the term is defined in § 6-702(2).

(i) Nothing in this section shall relieve any person of the obligation to construct and operate a solid waste facility in full compliance with any applicable laws, rules, or regulations, including those pertaining to nuisances, health, safety, environment, and zoning.

(j) Licenses or permits issued under this section shall be issued as a Class A Environmental Materials endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Feb. 27, 1996, D.C. Law 11-94, § 4, 42 DCR 7172; Apr. 20, 1999, D.C. Law 12-261, § 2003(m)(1), 46 DCR 3142.)

Section references. — This section is referred to in §§ 6-986 and 6-3454.

Effect of amendments. — D.C. Law 12-261 added (j).

Temporary addition of subchapter. — See note to § 6-3451.

Temporary amendment of section. — Section 4 of D.C. Law 11-24 amended § 6-3453(b)(1) and (b)(2), as enacted by D.C. Law 10-251, to read as follows:

"(b)(1) An existing solid waste facility shall cease construction, including site preparation, or operation by June 30, 1995, unless the Mayor has issued an interim operating permit for the facility pursuant to paragraph (2) of this subsection.

(2) The Mayor may issue an interim operating permit with terms and conditions of operation to an existing solid waste facility if the Mayor has received a completed solid waste facility permit application for that facility by June 30, 1995, and the payment of an initial permit fee of $15,000."

Section 5(b) of D.C. Law 11-24 provided that the act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary amendment of this section, see § 4 of the Emergency Assistance Clarification Emergency Amendment Act of 1995 (D.C. Act 11-36, April 11, 1995, 42 DCR 1839) and § 4 of the Emergency Assistance Clarification Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-105, July 21, 1995, 42 DCR 4019).

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-24. — Law

11-24, the "Emergency Assistance Clarification Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-187, which was retained by Council. The Bill was adopted on first and second readings on April 4, 1995, and May 2, 1995, respectively. Signed by the Mayor on May 15, 1995, it was assigned Act No. 11-52 and transmitted to both Houses of Congress for its review. D.C. Law 11-24 became effective on July 14, 1995.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Delegation of authority pursuant to D.C. Law 11-80, the "Solid Waste Facility Permit Temporary Act of 1995." — See Mayor's Order 96-31, March 8, 1996 (43 DCR 1381).

Delegation of authority pursuant to D.C. Law 11-94, the "Solid Waste Facility Permit Act of 1995." — See Mayor's Order 96-51, April 12, 1996 (43 DCR 2448).

§ 6-3454. Application for permits.

(a) Applications for solid waste facility permits and permit modifications shall be submitted to the Mayor in the form prescribed by regulation and shall include all information as the Mayor may reasonably require.

(b) The application fees for permits to operate solid waste facilities shall be as follows:

(1) Initial permit — $10, 000;

(2) Renewal permit — $9,000; and

(3) Modification permit for substantial alterations — $1,000.

(c) The payment under subsection (b)(1) of this section shall be waived if already paid pursuant to § 6-3453(b)(2).

(d) If the Mayor denies the issuance of a solid waste facility permit pursuant to § 6-3453(e), $9,000 shall be refunded to the applicant.

(e) The Mayor may, by rulemaking, revise the application fees as necessary to recover the administrative costs associated with the review of applications for solid waste facility permits and interim operating permits, the review of annual reports, the inspection of facilities, and all other activities associated with the administration and enforcement of this subchapter. Subject to the enactment of appropriations, solid waste facility application fees shall be used to offset the cost of reviewing and processing solid waste facility applications and monitoring facility compliance with the requirements of this subchapter and the terms and conditions of the solid waste facility permit.

(f) Any license issued pursuant to this section shall be issued as a Class A Environmental Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Feb. 27, 1996, D.C. Law 11-94, § 5, 42 DCR 7172; Apr. 9, 1997, D.C. Law 11-255, § 16, 44 DCR 1271; Apr. 20, 1999, D.C. Law 12-261, § 2003(m)(2), 46 DCR 3142.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (a).

D.C. Law 12-261 added (f).

Temporary addition of subchapter. — See note to § 6-3451.

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

Legislative history of Law 11-255. — See note to § 6-3415.

Legislative history of Law 12-261. — See note to § 6-3453.

§ 6-3455. Reporting and operating requirements.

(a) Owners and operators of solid waste facilities subject to the provisions of this subchapter shall submit periodic reports to the Mayor at the times specified by regulation. The reports shall contain all information the Mayor considers reasonably necessary to determine compliance with this subchapter. Records necessary to comply with this reporting requirement shall be maintained in a central location at each solid waste facility for a period of time prescribed by the Mayor. The Mayor may provide by rulemaking that failure to submit periodic reports or maintain records may result in the imposition of a fine of up to $25,000, suspension or revocation of a solid waste facility permit, or both.

(b) The information contained in the periodic reports and the application shall be considered proprietary and held confidential by the District.

(c) All new and existing solid waste facilities holding interim and permanent operating permits pursuant to this subchapter shall comply with the following operating and reporting requirements and prohibitions:

(1) Within six months from the effective date of the Solid Waste Facility Permit Amendment Act of 1998, each solid waste facility shall develop a traffic flow plan showing the routes used by inbound and outbound vehicles to the facility from the nearest arterial roads and any other arterial roads used by inbound or outbound vehicles. If the facility is located on an arterial road, the traffic flow plan shall encompass an area of no less than four blocks from the solid waste facility in any direction.

(2) No solid waste facility permit shall be issued until the traffic control plan has been assessed and approved by the Department of Public Works, which may set reasonable criteria for each plan as it deems necessary. Each solid waste facility shall submit traffic flow plans to the Department of Public Works. Each facility shall provide in notice in the District of Columbia Register, of its traffic flow plan to each Advisory Neighborhood Commission ("ANC") adjacent to the ANC in which the solid waste facility is operating and through which any of the inbound or outbound vehicles pass through for comment, publish the plan in a newspaper of general circulation in the District of Columbia and post the complete plan at the solid waste facility for public review. ANC comments must be submitted no later than 45 days after publication. A copy of any study, survey, professional opinion, or other materials relied upon by a solid waste facility in developing or submitting a traffic plan shall be provided to any requesting ANC.

(3) The traffic flow plan shall be designed to maximize use of truck routes or other arterial traffic routes of 4 or more lanes and to minimize truck traffic on residential streets or through residential areas. The plan shall include, at a minimum, a map designating the proposed travel routes for all trucks traveling to and from the facility and a plan for enforcement of the traffic flow plan by the facility. Inbound vehicles shall use arterial roads except when collecting waste. Outbound vehicles shall only use arterial or heavier roads, except for roads identified and approved in a facility's traffic flow plan. The traffic flow plan shall be implemented immediately upon approval by the Department of Public Works.

(4) Tracking by vehicles entering or exiting solid waste facilities on public space is prohibited. The omission of dust and odors into public space or adjoining private or personal property from solid waste facilities is prohibited.

(5) Each solid waste facility shall clean the streets immediately adjacent to the facility and those streets designated as proposed travel routes in its traffic flow plan at least once a week as needed with mechanical street sweeping equipment. The waste collected from the street sweeping equipment shall be transported to a licensed land field.

(6) Solid waste facilities shall install an entry and exit system, using BACT, as soon as practicable, but no later than 180 days from the effective date of the Solid Waste Facility Permit Amendment Act of 1998, to prevent dust and odors from escaping from the facility and to prevent animals and disease vectors from entering or exiting the facility. Truck doors or bays to the facility shall remain closed except when a vehicle is entering or exiting the facility.

(7) Each solid waste facility shall establish and maintain clean, waste-free paths within the facility pursuant to BACT. All trucks or other vehicles that use public roads must remain on those waste-free paths while within the facility.

(8) Each solid waste facility shall maintain a tire cleaning area near the exit to the facility. The tire cleaning area shall be designed to employ BACT standards. All waste water used in the facility shall be directed to a treatment area within the facility or to a municipal water treatment plant. Any waste water directed to a municipal water treatment plant shall conform with all applicable local and federal pre-treatment standards. The tires of trucks or other facility vehicles that use public roads shall be cleaned in the tire cleaning area before the trucks or other vehicles may exit the facility.

(9) Each existing solid waste facility shall continuously abate for disease vectors within a 4 block radius of the site, or demonstrate to the satisfaction of the Department of Health, Environmental Health Administration and the Department of Consumer and Regulatory Affairs that the facility is not providing vector harborage. The owner or operator of the solid waste facility shall provide reasonable notice to the community and seek permission to conduct abatement activities on all private properties within the 4 block radius before commencing abatement. Bait and traps shall not be placed on private property without the consent of the owner or occupant of the property. Bait and traps shall not be placed in open areas that are accessible to children or pets. Abatement shall be conducted according to environmental standards and safety protocols used by the Office of Rodent Control of the Department of Public Works.

(10) Each solid waste facility shall comply with the ventilation requirements established in 21 DCMR § 731.15(d)(6).

(11) Solid waste facilities shall not operate between the hours of 7:00 P.M. and 6:00 A.M.

(12) A solid waste facility shall not accept infectious, hazardous or radioactive waste and shall post signs warning persons entering the site that infectious, hazardous and radioactive waste is not permitted on this site. Each facility shall be required to install and maintain, in good working order, equipment capable of detecting radioactive waste. Any waste that enters a facility and triggers radiation detection equipment shall be prevented from leaving the facility or dumping waste at the facility.

(13) Each shipment of waste received by a solid waste handling facility shall be accompanied by a written manifest which shall contain:

(A) The date and time when the shipment arrived at the facility;

(B) The name and address of the transporter;

(C) A description of the types of waste in the shipment;

(D) The amount of waste received in the shipment;

(E) The name and address of each broker or customer who arranged or contracted for the transportation or disposal of waste in the shipment;

(F) The tag and registration number of each truck used to transport the shipment to and from the facility;

(G) The name and location of the final disposal facility to which the waste in the shipment will be directed;

(H) The date and time when the shipment departs the facility; and

(I) A certification by both the transporter and the owner or operator of the solid waste facility that no hazardous, infectious or radioactive waste was knowingly introduced by them into the facility.

(14) The solid waste handling facility shall provide a monthly summary of the information contained in the manifests to the Department of Health and shall maintain copies of these manifests and make them available for inspection for a minimum of one year after the waste was received at facility.

(15) Each solid waste facility shall develop an inspection, monitoring, and control plan to detect and prevent the handling of hazardous wastes, infectious waste or radioactive waste and shall submit that plan to the Department of Health for review and approval. The plan must include, at a minimum:

(A) Random inspections of incoming shipments;

(B) Inspection of suspicious shipments;

(C) Records of inspections, which must be maintained at the solid waste facility for a minimum of one year;

(D) Training of facility personnel to recognize illegal materials of suspicious shipments;

(E) Installation of radiation monitoring devices to screen all incoming shipments for radioactive activity higher than normal background levels; and

(F) Provision for proper disposal or treatment of hazardous, infectious or radioactive waste at licensed off-site facilities.

(16) The solid waste facility shall immediately notify the Department of Health and shall detain the shipment to allow for inspection by the Department of Health, if incoming shipments are found to contain hazardous, infectious or radioactive hazardous wastes. The shipment shall be secured to prevent access by unauthorized personnel, isolated from the main waste handling areas, and held in a manner to protect it from the elements, vermin, or other disease vectors and to prevent it from contaminating the solid waste handling facility or the surrounding community.

(17) The solid waste facility shall dispose of the hazardous, infectious or radioactive hazardous waste or shall direct the transporter to dispose of the wastes as outlined in its inspection, monitoring and control plan or as otherwise ordered by the Department of Health, immediately after inspection by the Department of Health or notification that it will not inspect the shipment. In no event shall the hazardous, infectious or radioactive hazardous waste remain on site for more than 24 hours.

(18) The solid waste facility shall provide a summary of its inspection activities in monthly reports to the Department of Health. These reports shall:

(A) Include the number of shipments received and the number of inspections conducted during the previous month;

(B) Identify by date and manifest number all shipments which were detained as a result of these inspections;

(C) Provide the reason for detention of any shipment;

(D) Identify the final disposal site for each detained shipment; and

(E) Provide a copy of the manifest for each detained shipment, including the names and addresses of the transporter of the detained shipment and all brokers or customers who arranged for the transportation or disposal of waste in the detained shipment. (Feb. 27, 1996, D.C. Law 11-94, § 6, 42 DCR 7172; _____, 1999, D.C. Law 12- (Act 12-624), § 2(b), 46 DCR 3435.)

Section references. — This section is referred to in § 6-3457.

Effect of amendments. — D.C. Law 12- (D.C. Act 12-624) inserted "and operating" in the section heading; and added (c).

Temporary addition of subchapter. — See note to § 6-3451.

Temporary amendment of section. — Section 2(c) of D.C. Law 12-120 amended the section heading and subsection (c) to read as follows:

"§ 6-3455. Reporting and operating requirements.

*****

"(c) All existing solid waste facilities holding interim operating permits pursuant to this act shall comply with the following operating and reporting requirements:

"(1) Within 30 days after the effective date of the Solid Waste Facility Permit Emergency Amendment Act of 1998, each solid waste facility shall develop a traffic flow plan for the area within a 4 block radius of the facility and shall submit that plan to the Department of Public Works for review and approval. The traffic flow plan shall be designed to maximize use of truck routes or other major traffic routes of 4 or more lanes and to minimize truck traffic on residential streets or through residential areas. The plan shall include, at minimum, a map designating the proposed travel routes for all trucks traveling to and from the facility and a plan for enforcement of the traffic flow plan by the facility. The traffic flow plan shall be implemented immediately upon approval by the Department of Public Works.

"(2) Each solid waste facility shall clean the streets immediately adjacent to the facility and those streets designated as proposed travel routes in its traffic flow plan at least once a week as needed.

"(3) A solid waste facility's truck doors or bays to the facility shall open only when a vehicle is entering or exiting the facility and shall close immediately after the vehicle enters or exits the facility.

"(4) Each solid waste facility shall establish and maintain clean, waste-free paths within the facility. All trucks or other vehicles that use public roads must remain on those waste-free paths while within the facility.

"(5) Within 30 days after the effective date of the Solid Waste Facility Permit Emergency Amendment Act of 1998, each solid waste facility shall establish a tire-washing area near the exit to the facility. The tire-washing area shall be designed to direct all waste water to a treatment area within the facility or to a municipal water treatment plant. Any waste water directed to a municipal water treatment plant shall conform with applicable pre-treatment standards. The tires of all trucks or other vehicles that use public roads shall be cleaned in the tire-washing area before the trucks or other vehicles may exit the facility.

"(6) Within 30 days after the effective date of the Solid Waste Facility Permit Emergency Amendment Act of 1998, each existing solid waste facility shall abate for disease vectors within a 4-block radius of the site, or demonstrate to the satisfaction of the Department of Consumer and Regulatory Affairs that the facility is not providing vector harborage. The owner or operator of the solid waste facility shall provide notice to the community and seek permission to conduct abatement activities on all private properties within the four block radius before commencing abatement. Bait and traps shall not be placed on private property without the consent of the occupant of the property. Bait and traps shall not be placed in open areas that are accessible to children or pets. Abatement shall be conducted according to environmental standards and safety protocols used by the Office of Rodent Control of the Department of Public Works.

"(7) Within 30 days after the effective date of the Solid Waste Facility Permit Emergency Amendment Act of 1998, a solid waste facility

shall comply with the ventilation requirements established in 21 DCMR § 731.15(d)(6) (43 DCR 6816, 6823 (1996)).

"(8) Immediately after the effective date of the Solid Waste Facility Permit Emergency Amendment Act of 1998, solid waste facilities shall not be permitted to operate between the hours of 7:00 P.M. and 6:00 A.M., or on Sundays."

Section 4(b) of D.C. Law 12-120 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Solid Waste Facility Permit Emergency Amendment Act of 1998 (D.C. Act 12-296, March 4, 1998, 45 DCR 1769).

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

Legislative history of Law 12-120. — See note to § 6-3451.

Legislative history of Law 12-(D.C. Act 12-624). — See note to § 6-3451.

§ 6-3456. Inspections.

The Mayor shall have the right to randomly and periodically inspect any solid waste facility located in the District, and all records, documents, or data compilations retained by the solid waste facility, for the purpose of ensuring compliance with this subchapter. Inspections shall generally take place while the solid waste facility is in operation. (Feb. 27, 1996, D.C. Law 11-94, § 7, 42 DCR 7172.)

Temporary addition of subchapter. — See note to § 6-3451.

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

§ 6-3457. Solid waste facility charge.

(a) In addition to the solid waste facility application fee for a permit, a person shall pay a solid waste facility charge for operating a solid waste facility in the District. The solid waste facility charge shall be based upon the actual tonnage of solid waste deposited at the solid waste facility, as indicated in the periodic report.

(b)(1) Except as provided in subsection (c) of this section, the solid waste facility charge shall be determined by multiplying the actual tonnage of solid waste deposited or placed at the solid waste facility by $4 per ton. The person shall pay the annual facility charge in conjunction with the submittal of periodic reports required by § 6-3455.

(2) If an applicant has already paid an annual solid waste facility charge of $10 per ton pursuant to section 8(b) of the Solid Waste Facility Permit Temporary Act of 1994, effective March 23, 1995 (D.C. Law 10-251; 42 DCR 520) ("Temporary Act of 1994"), the person may deduct from the first solid waste facility charge due after October 23, 1995, an amount equal to $6 per ton for any annual solid waste facility charge paid under the Temporary Act of 1994.

(c) Any solid waste facility which receives and processes construction and demolition wastes exclusively shall pay a solid waste facility charge which shall be determined by multiplying the actual tonnage of construction and demolition material deposited or placed at the solid waste facility by $2 per ton. The person shall pay the solid waste facility charge in conjunction with the submittal of periodic reports required by § 6-3455.

(d) The Mayor may revise the solid waste facility charge as necessary to offset the cost of developing new and additional methods of solid waste management and to fund recycling activities of the District to enforce the provisions of this subchapter.

(e) The Mayor shall suspend a solid waste facility operating permit and close the solid waste facility if the person fails to pay the solid waste facility charge within 10 calendar days of the due date. The Mayor shall keep the solid waste facility closed until all charges due the District are paid in full, including payment of a penalty equal to 1% per month for any unpaid balance.

(f) Subject to the enactment of appropriations, revenues collected from the payment of the solid waste facility charge shall be used to fund recycling activities in accordance with § 6-3415. Not more than 20% of the solid waste facility charge shall be made available to the agency responsible for the enforcement of the requirements of this subchapter. (Feb. 27, 1996, D.C. Law 11-94, § 8, 42 DCR 7172; _____, 1999, D.C. Law 12-(Act 12-624), § 2(c), 46 DCR 3435.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-624) added "to enforce the provisions of this subchapter" in (d); and added the second sentence in (f).

Temporary addition of subchapter. — See note to § 6-3451.

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

Legislative history of Law 12-(D.C. Act 12-624). — See note to § 6-3451.

§ 6-3458. Rulemaking.

(a) The Mayor is authorized, in accordance with § 1-1501 *et seq.*, to adopt rules and regulations to implement the provisions of this subchapter, including the establishment of:

(1) Solid waste facility permit requirements that include siting, construction, safety, environmental, and operating performance standards for solid waste facilities;

(2) Permit terms and conditions, which shall include requirements than an applicant for a solid waste facility permit comply with the following conditions:

(A) Before a solid waste facility permit may be issued all portions of the facility shall be located at leaste 500 feet from any property line;

(B) All portions of the operations area for the solid waste facility shall be set back at least 50 feet from the solid waste facility's own property line; and

(C) Any solid waste facility with an interim operating permit that cannot meet the siting standards in this subchapter shall have 3 years to phase out its operations and close. Nothing in this subchapter shall preclude the District, or any person from seeking and obtaining the immediate closure of a facility on any other basis.

(3) A schedule of fines for violations of this subchapter or the rules and regulations issued under its authority;

(4) Financial and other applicant disclosure forms;

(5) Bonding requirements, or other forms of commercial insurance, or such other mechanisms as the Mayor may deem appropriate;

(6) Procedures to ensure the prompt and safe removal of solid waste from a solid waste facility which has permanently ceased operation;

(7) Procedures to assure that the facility will minimize any negative impacts on an adjoining residential or commercial building or areas including deleterious impacts where materials are odorous to a reasonable person, create an attraction for rodents, or any other impact which may threaten the health of the surrounding neighborhood; and

(8) Application fees for permits and a solid waste facility charge.

(b) The Mayor is further authorized to amend or repeal any provision of Chapter 3 of Title 8 of the District of Columbia Health Regulations, issued June 29, 1971 (Reg. 71-21; 21 DCMR 700 *et seq.*), to conform the Chapter with, or to further the purposes of, this subchapter. (Feb. 27, 1996, D.C. Law 11-94, § 9, 42 DCR 7172; _____, 1999, D.C. Law 12- (Act 12-624), § 2(d), 46 DCR 3435.)

Effect of amendments. — D.C. Law 12- (D.C. Act 12-624) rewrote (a)(2).

Temporary addition of subchapter. — See note to § 6-3451.

Temporary amendment of section. — Section 2(d) of D.C. Law 12-120 amended this section by adding a (c) to read as follows:

"(c) Before a solid waste facility permit may be issued, an applicant for a solid waste facility permit shall comply with the following conditions:

"(1) All portions of the facility shall be located at least 500 feet from any property line.

"(2) All portions of the operations area for the solid waste facility shall be set back at least 50 feet from the solid waste facility's own property line."

Section 4(b) of D.C. Law 12-120 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the Solid Waste Facility Permit Emergency Amendment Act of 1998 (D.C. Act 12-296, March 4, 1998, 45 DCR 1769).

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

Legislative history of Law 12-120. — See note to § 6-3451.

Legislative history of Law 12-(D.C. Act 12-624). — See note to § 6-3451.

Zoning Commission regulations — Section 2(d) of D.C. (Act 12-296) required, on an emergency basis that all portions of a solid waste facility be set back at least 500 feet from any property line. However, regulations promulgated by the Zoning Commission, 45 DC 1848, require a 300 foot separation from residential property and a 50 foot separation from a public park, retail, office, and institutional property.

§ 6-3459. Hearings.

Any person adversely affected by an action taken pursuant to the provisions of this subchapter, or the rules and regulations issued under its authority, shall be entitled to a hearing before the Mayor upon filing with the Mayor, within 15 days of the date of the action, a written request for a hearing. The hearing shall be held in accordance with § 1-1509. (Feb. 27, 1996, D.C. Law 11-94, § 10, 42 DCR 7172.)

Temporary addition of subchapter. — See note to § 6-3451.

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

§ 6-3460. Remedies and penalties.

(a)(1) Whenever the Mayor has reason to believe that (A) there has been a violation of this subchapter or the rules and regulations issued under its

authority, or (B) a threat exists to human health, the public welfare, or the environment as the result of the construction, modification, or operation of a solid waste facility located within the District, the Mayor may give written notice of the alleged violation or threat to the person responsible and order the person to take such corrective measures as the Mayor determines reasonable and necessary.

(2) If a person fails to comply with the notice within the time period stated in the notice, the Mayor may take corrective actions necessary to alleviate or terminate the violation or threat. The Mayor may assess a penalty against the person responsible equal to triple the costs of undertaking the corrective actions, or close the facility, or both.

(b) If the Mayor finds that any person is constructing or operating a solid waste facility in a manner which endangers human health, the public welfare, or the environment, or is operating a facility in violation of this subchapter, the Mayor may (A) request the Corporation Counsel to commence appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief, or (B) issue a cease and desist order.

(c) The Mayor or any court may impose civil fines, penalties, costs, and fees as alternate sanctions for violations of this subchapter, or the rules and regulations issued under its authority, pursuant to § 6-2702 *et seq.* Adjudications of any infractions of this subchapter shall be pursuant to § 6-2702 *et seq.* For any violation, each day of the violation shall constitute a separate offense and the penalties prescribed shall apply separately to each separate offense.

(d) Any solid waste facility that is not in compliance with the requirements of this subchapter, regulations promulgated to implement this subchapter, or any permit term or condition shall, upon a finding of noncompliance by the Departments of Consumer and Regulatory Affairs, Public Works, or Health, or by the Superior Court of the District of Columbia, be closed. Any facility so closed may file a petition with the Department finding it in noncompliance, for a hearing to allow it to reopen. At the hearing, the facility must prove that it has come into compliance, or has a plan to come into compliance which shall be implemented before the facility may reopen. In allowing a facility to reopen, the Department may impose additional terms and conditions as it deems proper and necessary to protect the public health and safety and to carry out the purposes of this subchapter. These conditions may include, but are not limited to, requiring a facility to pay reasonable fees for independent experts, sample testing, and government costs in monitoring the petitioning facility's compliance, before or after a finding of noncompliance is made.

(e) Any solid waste facility that is not in compliance with the requirements of this subchapter, regulations promulgated to implement this subchapter, or any permit term or condition is a public nuisance and may be enjoined and abated as provided in this subchapter.

(f) An action to enjoin any public nuisance defined in subsection (e) of this section may be brought in the name of the District of Columbia by the Corporation Counsel or any of his or her assistants, in the Civil Branch of the Superior Court of the District of Columbia against any person conducting or maintaining the public nuisance. The rules of the Superior Court of the District of Columbia relating to granting an injunction or restraining order

shall be applicable to actions brought pursuant to this subsection, except that the District, as complaining party, shall not be required to furnish bond or security. It shall not be necessary for the Court to find that the building, ground, premises, or place was being unlawfully used at the time of the hearing. The Court shall enter an order restraining the defendant from operating a solid waste facility in violation of this subchapter, upon finding that the material allegations of the complaint are true. Nothing in this section shall preclude any person or class of persons, from bringing a public or private nuisance claim against a solid waste facility.

(g) In the case of the violation of any temporary or permanent injunction rendered pursuant to the provisions of this section, proceedings for punishment for contempt may be commenced by the Corporation Counsel or any of his or her assistants, by filing with the Court in the same case in which the injunction was issued a petition under oath setting out the alleged offense constituting the violation and serving a copy of the petition on the defendant requiring him or her to appear and answer the petition within 10 days receipt of service. The trial shall be promptly held and may be upon affidavits of either party. Either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt pursuant to this section shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 12 months, or both.

(h) Any person adversely affected by violations of this subchapter or the rules and regulations issued pursuant to this subchapter may commence a civil action on his or her own behalf to secure any appropriate relief, including injunctive relief and the payment of civil fines or penalties, as established by the Mayor pursuant to this subchapter. In any action brought pursuant to this subsection, the court, in issuing its final order, may award costs of litigation, including reasonable expert witness and attorneys fees, to the prevailing or substantially prevailing party, whenever the court determines that an award is appropriate.

(i) Any person violating the provisions of this subchapter, or any rule, regulation or permit issued under its authority, shall, upon conviction in the Superior Court of the District of Columbia, be guilty of a misdemeanor and be fined no more than $1,000 or imprisoned for a period not to exceed 30 days, or both, in the discretion of the court. (Feb. 27, 1996, D.C. Law 11-94, § 11, 42 DCR 7172; _____, 1999, D.C. Law 12-(Act 12-624), § 2(e), 46 DCR 3435.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-624) added (d) through (i).

Temporary addition of subchapter. — See note to § 6-3451.

Temporary amendment of section. — Section 2(e) of D.C. Law 12-120 amended this section by inserting a (c-1) to read as follows:

"(c-1) Any person adversely affected by violations of this subchapter or the rules and regulations issued pursuant to this subchapter may commence a civil action on his or her own behalf to secure any appropriate relief, including injunctive relief and the payment of civil fines or penalties, as established by the Mayor pursuant to this subchapter. In any action brought pursuant to this subsection, the court, in issuing its final order, may award costs of litigation, including reasonable expert witness and attorneys fees, to any prevailing or substantially prevailing party, whenever the court determines that such an award is appropriate."

Section 4(b) of D.C. Law 12-120 provides that the act shall expire after 225 days of its having taken effect.

Temporary addition of section. — Section 2(f) of D.C. Law 12-120 added a new § 6-3460.1 to read as follows:

"§ 6-3460.1 Moratorium.

"After March 4, 1998, the effective date of the Solid Waste Facility Permit Emergency Amend-

ment Act of 1998, there shall be a moratorium on the issuance of any new solid waste facility permits."

Section 4(b) of D.C. Law 12-120 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(e) of the Solid Waste Facility Permit Emergency Amendment Act of 1998 (D.C. Act 12-296, March 4, 1998, 45 DCR 1769), and § 2 of the Solid Waste Facility Permit Emergency Amendment Act of 1999 (D.C. Act 13-17, February 12, 1999, 46 DCR 2351).

For temporary addition of § 6-3460.1, see § 2(f) of the Solid Waste Facility Permit Emergency Amendment Act of 1998 (D.C. Act 12-296, March 4, 1998, 45 DCR 1769).

For temporary addition of §§ 6-3461 through 6-3463, see § 2(b) through (d) of the Solid Waste Facility Permit Second Emergency Amendment Act of 1998 (D.C. Act 12-623, February 1, 1999, 45 DCR 1364).

Legislative history of Law 10-251. — See note to § 6-3451.

Legislative history of Law 11-80. — See note to § 6-3451.

Legislative history of Law 11-94. — See note to § 6-3451.

Legislative history of Law 12-120. — See note to § 6-3451.

Legislative history of Law 12-(D.C. Act 12-624). — See note to § 6-3451.

§ 6-3461. Solid Waste Transfer Facility Site Selection Advisory Panel established.

(a) There is established the Solid Waste Transfer Facility Site Selection Advisory Panel ('Panel') with the purpose of preparing comprehensive recommendations to the Council that identify tracts of land suitable for solid waste transfer operations within appropriately zoned sections of the District that safeguard the health, safety and welfare of residents and businesses.

(b) The Panel shall submit its recommendations in a report, which shall include a map that identifies potential sites for the location of solid waste facilities, within 6 months of the Panel's first meeting. The Panel shall rate each site according to its suitability for the purpose of solid waste transfer and shall consider the proximity of other potential sites in rating each site. The potential sites the Panel identifies shall comply with all siting requirements of this subchapter, shall not be inconsistent with the Comprehensive Plan and shall not increase or compound existing detrimental environmental impacts.

(c) In addition to identifying potential sites and rating these sites, the Panel shall study and report on:

(1) The District's reasonable carrying capacity as a regional solid waste facility site based on best practices in solid waste management;

(2) An evaluation of the impact of existing solid waste facilities on local residents;

(3) A study of the solid waste needs of the District;

(4) The total revenue the District has received yearly from each solid waste facility operating in the District since the Certificate of Occupancy was issued for the facility, showing the kinds of taxes and fees that have been paid; and

(5) The available control technologies capable of complying with the BACT standard for the solid waste.

(d) The Panel is authorized to seek the advice of experts with knowledge of the following areas of concern:

(1) Construction techniques for solid waste handling facilities, including knowledge of air modeling and emissions control;

(2) Traffic flow and infrastructure impact and degradation; and

(3) Interstate commerce and the economics of solid waste management.

(e) The Panel shall consult with District agencies with solid waste management expertise, including, but not limited to, the Department of Consumer and Regulatory Affairs, the Department of Public Works and the Department of Health. The Panel shall also consult with the Washington Area Council of Governments and its staff to inform the Panel of regional considerations in solid waste management.

(f) The Panel shall consult with the National Environmental Justice Advisory Council, which is a federal advisory committee established to provide independent judgment to the U.S. Environmental Protection Agency on environmental issues and which is studying or will study the health and environmental impacts of municipal waste transfer operations on minority and disadvantaged communities, including the District.

(g) Within 45 days of its first meeting, the Panel shall provide notice of and hold a public meeting to receive testimony from citizens in respect to the operation of solid waste facilities in the District of Columbia, and shall hold an additional public meeting to present the Panel's findings and a draft report to the community for comment 20 days prior to submitting to the Council the report required by this subchapter. (Feb. 27, 1996, D.C. Law 11-94, § 11a, as added _____, 1999, D.C. Law 12-(Act 12-624), § 2(f), 46 DCR 3435.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-624) added this section.

Legislative history of Law 12-(D.C. Act 12-624). — See note to § 6-3451.

§ 6-3462. Composition; appointment; vacancies; terms of office; compensation.

(a) The Panel shall be a nonpartisan Panel composed of 9 voting and 5 non-voting, ex officio members.

(1) The voting members of the Panel shall be composed as follows:

(A) One member shall have expertise in environmental health standards;

(B) One member shall have expertise in the economics of solid waste management;

(C) One member shall have expertise in neighborhood economic development;

(D) One member shall have expertise in land use planning;

(E) One member shall have expertise in environmental law;

(F) Three members shall be District residents, drawn from the public at large, who have no fiduciary or pecuniary interest in the operation of a solid waste facility in the District and public at large; and

(G) One member shall be a representative of the solid waste industry, not associated with any company currently operating a facility in the District.

(2) The non-voting, ex officio members of the Panel shall be the following persons or their designees:

(A) The Director of the Department of Health, Environmental Health Administration;

(B) The Director of the Department of Public Works;

(C) The Director of the Department of Consumer and Regulatory Affairs;

(D) The Director of the Office of Planning; and

(E) The Corporation Counsel.

(b) Members of the Panel shall be nominated by the Mayor who shall transmit to the Council, for a 45-day period of review, excluding days of Council recess, these nominations to the Panel. The Council shall be deemed to have approved a nomination under this subsection if during the 45-day period, no member introduces a resolution disapproving the nomination. If a member introduces a resolution disapproving the nomination within the 45-day period, the Council shall have an additional 45 days, excluding days of Council recess, to disapprove the nomination by resolution, or it will be deemed approved. All appointments shall be made within 90 calendar days of the effective date of the Solid Waste Facility Permit Amendment Act of 1998. The members of the Panel shall elect a Chairperson from among their number by majority vote at a regularly scheduled meeting at which a majority is present. A vacancy shall be filled in the same manner in which its initial appointment was made.

(c) Members of the Panel shall serve a single, non-renewable term not to exceed one year.

(d) Members of the Panel shall serve without compensation. Members, however, may be reimbursed for actual expenses incurred in the performance of official duties for parking, transportation or mileage, not to exceed $15 per meeting.

(e) The Panel is authorized to receive funding for office space and for administrative expenses not to exceed $150,000, which funds shall be made available from the Non Personnel Services budget of the City Administrator based on the availability of appropriations. (Feb. 27, 1996, D.C. Law 11-94, § 11b, as added _____, 1999, D.C. Law 12-(Act 12-624), § 2(f), 46 DCR 3435.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-624) added this section.

Legislative history of Law 12-(D.C. Act 12-624). — See note to § 6-3451.

§ 6-3463. Moratorium.

There shall be a moratorium on the issuance or acceptance of the application for any new solid waste facility permits until after the Solid Waste Transfer Facility Site Selection Advisory Panel submits its report to the Council and the Council acts on the Panel's recommendations by identifying tracts of land appropriate for solid waste transfer, or, amending the operating requirements established in this subchapter. (Feb. 27, 1996, D.C. Law 11-94, § 11c, as added _____, 1999, D.C. Law 12-(Act 12-624), § 2(f), 46 DCR 3435.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-624) added this section.

Legislative history of Law 12-(D.C. Act 12-624). — See note to § 6-3451.

CHAPTER 36. CHILD CARE SERVICES AND FACILITIES.

Subchapter I. Child Care Services Assistance Fund.

Subchapter I. Child Care Services Assistance Fund.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-215, the preexisting text of Chapter 6, consisting of to include §§ 6-3601 to 3608, has been designated as subchapter I of the chapter.

§ 6-3601. Definitions.

(a) "Child" means "child" as defined in § 3-301(1).

(b) "Child development center" means "child development center" as defined in § 3-301(2).

(c) "Child development home" means "child development home" as defined in § 3-301(3).

(d) "Fund" means the Child Care Services Assistance Fund established by § 6-3602.

(e) "Person" means an individual, partnership, association, or corporation. (Mar. 16, 1989, D.C. Law 7-220, § 2, 36 DCR 550.)

§ 6-3602. Child Care Services Assistance Fund; established.

(a) There is established a revolving Child Care Services Assistance Fund, to be administered by the Mayor, for the purpose of providing loans and grants of up to $10,000 to open new child care facilities or to expand, repair, or improve existing child care facilities in the District, including a child development center or a child development home.

(b) There is authorized to be appropriated out of the revenue of the District an amount necessary to carry out the purposes of this subchapter. (Mar. 16, 1989, D.C. Law 7-220, § 3, 36 DCR 550.)

Editor's notes. — Because of the codification of D.C. Law 12-215 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 36 as subchapter I, "subchapter" has been substituted for "chapter" in subsection (b).

§ 6-3603. Sources of funding.

The fund shall consist of, but not be limited to, money from the following sources:

(1) Appropriations;

(2) Grants or gifts from public or private sources to the fund or to the District for the purposes of the fund;

(3) Repayments of principal and interest on loans provided from the fund;

(4) Proceeds realized from the liquidation of a security interest held by the District on loans made from the fund;

(5) Interest earned on the deposit or investment of money from the fund; and

(6) All other revenue, receipts, or fees derived from the operation of the fund. (Mar. 16, 1989, D.C. Law 7-220, § 4, 36 DCR 550.)

§ 6-3604. Eligibility.

(a) In order to be eligible for a loan or grant from the fund, the applicant shall:

(1) Be a District resident who is current in the payment of all taxes and other obligations owed to the District, except that a corporation, association, or partnership must be organized and doing business in the District;

(2) Obtain, from sources other than the fund, money to finance no less than 25% of the cost of the project; and

(3) Submit to the Mayor, for approval, a business plan, which shall include an estimated schedule for completion of the project, the estimated number of children to be served, and the designation of the proposed site in the District.

(b) Each project financed by the fund shall comply with § 5-1301 et seq., and the Child Development Facilities Regulation, effective December 14, 1974 (Regulation No. 74-34; 21 DCR 1333).

(c) The applicant shall obtain insurance as required by the Mayor and indemnify the District from any liability arising out of the operation of the facility.

(d) In order to be eligible for a grant from the fund, the applicant must be a non-profit organization. (Mar. 16, 1989, D.C. Law 7-220, § 5, 36 DCR 550.)

§ 6-3605. Repayment.

(a) For each loan issued under this subchapter, the Mayor shall arrange a repayment schedule.

(b) Each loan granted from the fund shall be recorded as a lien against the real and personal property of the applicant. (Mar. 16, 1989, D.C. Law 7-220, § 6, 36 DCR 550.)

Editor's notes. — Because of the codification of D.C. Law 12-215 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 36 as subchapter I, "subchapter" has been substituted for "chapter" in subsection (a).

§ 6-3606. Disclaimer of liability.

A person who receives a loan or grant from the fund shall not be considered an agent or instrumentality of the District as a result of the receipt of the loan. (Mar. 16, 1989, D.C. Law 7-220, § 7, 36 DCR 550.)

§ 6-3607. Rules.

Within 120 days of March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 16, 1989, D.C. Law 7-220, § 8, 36 DCR 550.)

Editor's notes. — Because of the codification of D.C. Law 12-215 as subchapter II of this chapter, the designation of the preexisting text of Chapter 36 as subchapter I, "subchapter" has been substituted for "chapter" in the first sentence.

§ 6-3608. Annual report by Mayor.

The mayor shall submit to the Council, no later than 6 months after the end of each fiscal year, a report on the financial condition of the fund and the results of the operation of the fund for the fiscal year. (Mar. 16, 1989, D.C. Law 7-220, § 9, 36 DCR 550.)

Subchapter II. Child Development Facilities Regulation.

§ 6-3621. Definitions.

For the purposes of this subchapter, the term:

(1) "Care giver" means an individual whose duties include direct care, supervision, and guidance of infants or children in a child development facility.

(2) "Child" or "children" means an individual or individuals from 2 years to 15 years of age.

(3) "Child development facility" means a center, home, or other structure that provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name. "Child development facility" does not include a public or private elementary or secondary school engaged in legally required educational and related functions.

(4) "Infant" means an individual younger than 12 months of age.

(5) "Licensee" means a child development facility that is licensed pursuant to this subchapter.

(6) "Person" means any individual, firm, partnership, company, corporation, trustee, or association.

(7) "Related person" means any legal guardian or any of the following relationships established by marriage, adoption, or blood to the 5th degree:

(A) Parent or step-parent;

(B) Grandparent;
(C) Brother, sister, step-sister, or step-brother;
(D) Uncle or aunt; or
(E) Niece or nephew.

(8) "Toddler" means an individual older than 12 months but less than 24 months of age. (Apr. 13, 1999, D.C. Law 12-215, § 2, 46 DCR 274.)

Temporary addition of subchapter. — Sections 2 through 21 of D.C. Law 12-71 enacted §§ 6-3621 through 6-3640.

Section 23(b) of D.C. Law 12-71 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary regulation of child development facilities, see §§ 2-21 of the Child Development Facilities Regulation Emergency Act of 1997 (D.C. Act 12-206, December 15, 1997, 44 DCR 346).

For temporary addition of subchapter II, see §§ 2-21 of the Child Development Facilities Regulation Emergency Act of 1998 (D.C. Act 12-511, November 10, 1998, 45 DCR 8153), and §§ 2-21 of the Child Development Facilities Regulation Congressional Review Emergency Act of 1999 (D.C. Act 13-11, February 8, 1999, 46 DCR 2322).

Section 22 of D.C. Act 12-511 provides for the retroactive application of the act.

Section 22 of D.C. Act 13-11 provides for the retroactive application of the act.

Legislative history of Law 12-71. — Law 12-71, the "Child Development Facilities Regulation Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-167, which was retained by Council. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 15, 1997, it was assigned Act No. 12-223 and transmitted to both Houses of Congress for its review. D.C. Law 12-71 became effective on March 20, 1998.

Legislative history of Law 12-215. — Law 12-215, the "Child Development Facilities Regulation Act of 1998," was introduced in Council and assigned Bill No. 12-325, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-530 and transmitted to both Houses of Congress for its review. D.C. Law 12-215 became effective on April 13, 1999.

§ 6-3622. Applicability and scope.

(a) This subchapter shall apply to every child development facility and care giver in the District of Columbia.

(b) Unless exempted by this subchapter or the laws of other jurisdictions, the provisions and requirements in this subchapter shall also apply to all child development facilities operated by the District government outside the District of Columbia. (Apr. 13, 1999, D.C. Law 12-215, § 3, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3623. Exemptions.

The provisions of this subchapter shall not apply to the following:

(1) Occasional babysitting in a babysitter's home for the children of one family;

(2) Informal parent-supervised neighborhood play groups;

(3) Care furnished in places of worship during religious services;

(4) Care given by an individual who is related to the child, infant, or toddler; or

(5) Child development facilities operated by the federal government on federal government property; however, a private child care provider utilizing

space in or on federal government property is not exempt unless federal law specifically exempts the facility from the District's regulatory authority. (Apr. 13, 1999, D.C. Law 12-215, § 4, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3624. License required.

(a) Except as otherwise provided in this subchapter, no person shall, either directly or indirectly, operate a child development facility in the District without first having obtained a license to do so.

(b) An applicant for a license to operate a child development facility shall establish to the satisfaction of the Mayor, that the facility meets all requirements set forth in this subchapter and rules adopted pursuant to this subchapter.

(c) An applicant for a license shall:

(1) Submit an application to the Mayor on a form required and provided by the Mayor;

(2) Submit supporting documentation required by the Mayor; and

(3) Pay the applicable fee established by the Mayor, except that no license fee shall be required of any child development facility operated by the District government.

(d) The license shall be valid for a period of time to be determined by the Mayor and only for the premises and persons named as applicants in the application. Any change in ownership of a licensee owned by a person or in the legal or beneficial ownership of a percentage of stock established by rule of a corporate licensee shall require relicensure.

(e) The Mayor may authorize the issuance of provisional and restricted licenses under specific circumstances and criteria to be established by rule. (Apr. 13, 1999, D.C. Law 12-215, § 5, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3625. Licenses issued pursuant to prior law.

Except as otherwise provided by this subchapter, any child development facility licensed pursuant to the Child Development Facilities Regulation, enacted December 14, 1974 (Reg. 74-34; 29 DCMR § 300 et seq.) ("Child Development Facilities Regulation"), as amended, shall be considered licensed pursuant to this subchapter and shall be subject to renewal requirements established pursuant to this subchapter. (Apr. 13, 1999, D.C. Law 12-215, § 6, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3626. Powers and duties of the Mayor.

(a) The Mayor shall promulgate all rules necessary to implement the provisions of this subchapter, including the following:

(1) Minimum standards of operation of a child development facility concerning staff qualification, requirements and training, facility size, staff-child ratios and group size, program design and equipment requirements, safety and health standards, care for children with special needs, nutrition standards, and record keeping requirements;

(2) Administrative procedures for hearings consistent with the requirements of § 1-1509, unless otherwise provided in this subchapter;

(3) Allowance for a child development facility to operate on a 24-hour basis so long as no child, infant, or toddler will be under the care of the child development facility for more than 18 consecutive hours in a 24-hour period, or appropriate hours as provided by rule; and

(4) The establishment of a fee schedule to recover the costs of regulating child development facilities pursuant to this subchapter.

(b) The Mayor may conduct investigations and inspections needed to ensure compliance with this subchapter. In this regard, the Mayor may administer oaths, examine witnesses, and issue subpoenas to compel attendance and testimony of witnesses and the production of books, records, and other documents needed to enforce this subchapter. In case of contumacy or refusal to obey a subpoena, the Superior Court of the District of Columbia, at the request of the Mayor, shall issue an order requiring the contumacious person to appear and testify or produce books, papers, or other evidence bearing on the hearing. Failure to obey the court's order shall be punishable as contempt of court.

(c) The Mayor shall maintain and make available to the public information concerning:

(1) The application, licensure, and renewal requirements and procedures; and

(2) An official register of currently licensed child development facilities. (Apr. 13, 1999, D.C. Law 12-215, § 7, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3627. Variances.

An applicant operating a child development facility prior to July 1, 1975, may be granted a variance from the physical or structural requirements of any rule adopted pursuant to this subchapter upon a determination by the Mayor that full compliance would result in exceptional and undue hardship. Any

variance shall be granted in accordance with procedures established by rule. (Apr. 13, 1999, D.C. Law 12-215, § 8, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3628. License renewal.

(a) A license shall be renewed in accordance with rules established pursuant to this subchapter, unless there is a pending disciplinary action by the Mayor.

(b) An application for renewal of a license shall be submitted to the Mayor no later than 90 days before expiration of the license on a form provided by the Mayor with the appropriate renewal fee. An application for renewal fewer than 90 days after expiration, shall be renewed in accordance with renewal requirements established by rule, including the payment of the renewal fee and any late penalty.

(c) A child development facility holding a valid license at the time of application for renewal shall continue to operate as licensed until the Mayor acts on the renewal application. (Apr. 13, 1999, D.C. Law 12-215, § 9, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3629. Denial of a license.

The Mayor may, subject to the right to a hearing, deny an initial or renewal license to an applicant who fails to establish that the applicant meets the requirements for licensure established by this subchapter and rules issued pursuant to this subchapter. (Apr. 13, 1999, D.C. Law 12-215, § 10, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3630. Revocation, suspension, denial of license.

The Mayor may, subject to the right to a hearing, refuse to issue, revoke, suspend, or deny renewal of a license to operate a child development facility to a person who is found to have:

(1) Failed to comply with the provisions of this subchapter and any rules or regulations promulgated pursuant to this subchapter;

(2) Failed to comply with other federal and District laws applicable to child development facilities;

(3) Committed, aided, abetted, or permitted to be committed any act of dishonesty, fraud, gross negligence, abuse, assault, battery, or other illegal acts related to the operation of the facility; or

(4) Been convicted of a crime involving moral turpitude. (Apr. 13, 1999, D.C. Law 12-215, § 11, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3631. Summary suspension.

(a) If, after an investigation, the Mayor determines that a licensee has failed to comply with the provisions of this subchapter or any rules promulgated pursuant to this subchapter in such a manner as to present an imminent danger to the health, safety, and welfare of children, infants, toddlers, or the general public, the Mayor may summarily suspend or restrict the license prior to a hearing.

(b) The Mayor must provide the licensee with written notice of the summary suspension initiated pursuant to subsection (a) of this section, the reason for the suspension, and the right to request a hearing.

(c) The licensee shall have 5 days after service of the notice of the summary suspension in which to request a hearing to challenge the summary suspension. A hearing shall be held within 5 business days of a timely request and the Mayor shall issue a decision within 5 business days after closing the record. (Apr. 13, 1999, D.C. Law 12-215, § 12, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3632. Cease and desist orders.

(a) If, after investigation, the Mayor determines that a person has violated any provision of this subchapter or any rule issued pursuant to this subchapter, and the violation presents an imminent danger to the public, the Mayor may issue a written order directing the person to cease and desist from the violation.

(b) Within 5 days of service of the cease and desist order, the person shall request an expedited hearing on the violation. If no request for a hearing is made within the 5-day period, the cease and desist order shall be final. Within 5 business days of a timely request for an expedited hearing, the Mayor shall conduct a hearing. (Apr. 13, 1999, D.C. Law 12-215, § 13, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3633. Right of entry and inspection.

To ensure compliance with the provisions of this subchapter and rules adopted pursuant to this subchapter, the Mayor, or any duly authorized designee, shall be permitted at reasonable times to conduct an inspection of any child development facility licensed pursuant to this subchapter or for which a license application has been filed. (Apr. 13, 1999, D.C. Law 12-215, § 14, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3634. Hearings.

(a) Exception as provided in § 6-3631, before the Mayor denies an application, suspends, revokes, or restricts a license, or imposes a civil fine, the Mayor shall give the person notice of the contemplated action and an opportunity for a hearing. The Mayor shall send all notices by certified mail. Notice of a scheduled hearing shall be sent by certified mail at least 20 days before the hearing date except when an expedited hearing has been requested. The Mayor may request all parties to participate in a settlement conference prior to a hearing and may enter into a negotiated settlement agreement or consent decree in lieu of a hearing.

(b) The Mayor may delegate the authority to conduct a hearing and issue a final decision to an administrative law judge or an attorney examiner in accordance with rules issued pursuant to this subchapter. (Apr. 13, 1999, D.C. Law 12-215, § 15, 46 DCR 274.)

Temporary addition of subchapter. — See note to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3635. Judicial review.

A person aggrieved by a final decision of the Mayor may appeal the decision to the District of Columbia Court of Appeals pursuant to § 1-1510. (Apr. 13, 1999, D.C. Law 12-215, § 16, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3636. Criminal and civil penalties.

(a) Any person who violates any provision of this subchapter shall, upon conviction, be subject to imprisonment not to exceed 6 months or a fine not to exceed $300, or both. Each unlawful act shall constitute a separate violation of this subchapter.

(b) Any person who has been previously convicted pursuant to this subchapter shall, upon conviction, be subject to imprisonment not to exceed one year or a fine not to exceed $5,000, or both.

(c) Civil fines and penalties may be imposed as alternative sanctions for any violations of the provisions of this subchapter or rules issued under the authority of this subchapter pursuant to Chapter 27 of Title 6 ("Civil Infractions Act"). The adjudication of any infraction issued pursuant to the Civil Infractions Act shall be pursuant to titles I through III of the Civil Infractions Act. (Apr. 13, 1999, D.C. Law 12-215, § 17, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3637. Prosecutions.

(a) Prosecutions of violations of this subchapter shall be brought by the Corporation Counsel in the name of the District of Columbia.

(b) In prosecutions initiated pursuant to this subchapter, a child development facility claiming an exemption from a licensing requirement of this subchapter shall have the burden of proving entitlement to the exemption. (Apr. 13, 1999, D.C. Law 12-215, § 18, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3638. Injunctions.

(a) The Corporation Counsel may bring an action in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any violation of this subchapter.

(b) Remedies established by this section shall be in addition to criminal sanctions, civil sanctions, or disciplinary action initiated by the Mayor.

(c) In any proceeding brought pursuant to this section, it shall not be necessary to prove that any person has been injured by the violation alleged. (Apr. 13, 1999, D.C. Law 12-215, § 19, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

§ 6-3639. Repeal of existing regulations.

The Child Development Facilities Regulation shall remain in effect until superseded by rules issued by the Mayor. Upon the effective date of rules promulgated pursuant to this subchapter, the Child Development Facilities

Regulation shall be deemed repealed. (Apr. 13, 1999, D.C. Law 12-215, § 20, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

Delegation of Authority Pursuant to D.C. Act 12-206, the "Child Development Facilities Regulation Emergency Act of 1997." — See Mayor's Order 98-43, April 7, 1998 (45 DCR 2688).

§ 6-3640. Pending actions and proceedings; existing orders.

(a) No judicial or administrative proceeding commenced by or against any child development facility, or officer or employee of a child development facility in his or her official capacity, shall abate by reason of the taking effect of this subchapter; but the action or proceeding shall be continued with substitution as to parties and officers or agencies as are appropriate.

(b) All decisions issued pursuant to the Child Development Facilities Regulation shall continue in effect until modified, rescinded, or superseded by rules or regulation issued pursuant to this subchapter. (Apr. 13, 1999, D.C. Law 12-215, § 21, 46 DCR 274.)

Temporary addition of subchapter. — See notes to § 6-3621.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-3621.

Legislative history of Law 12-71. — See note to § 6-3621.

Legislative history of Law 12-215. — See note to § 6-3621.

CHAPTER 37. LOW-LEVEL RADIOACTIVE WASTE GENERATOR REGULATORY POLICY.

Sec.
6-3702. Reports.
6-3703. Registration; fee.

§ 6-3701. Definitions.

Delegation of Authority Pursuant to D.C. Law 8-226, the "District of Columbia Low-Level Radioactive Waste Generator Regulatory Policy Act of 1990." — See Mayor's Order 98-52, April 15, 1998 (45 DCR 2698).

§ 6-3702. Reports.

* * * * *

(d) Beginning on July 1, 1991, and on April 1 of each subsequent year, the Mayor shall submit to the Council of the District of Columbia, a report that summarizes and categorizes by type of generator, the nature, characteristic, and quantity of waste generated in the District during the previous calendar year. (Mar. 7, 1991, D.C. Law 8-226, § 3, DCR 219; Apr. 18, 1996, D.C. Law 11-110, § 17, 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 validated a previously made stylistic change in (d).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 6-3703. Registration; fee.

(a) Pursuant to rules issued by the Mayor in accordance with § 6-3706, beginning in 1991, any person who generates waste in the District shall register annually with the Mayor on a form prescribed by the Mayor and pay an annual registration fee to be established by the Mayor. Any generator who fails to register as required by this section shall be fined an amount not to exceed $5,000 for each day of noncompliance and may be required to forfeit any right, license, permit, or privilege to possess radioactive materials in the District.

(b) Any registration issued pursuant to this section shall be issued as a Class A Public Health: Radioactive Equipment endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Mar. 7, 1991, D.C. Law 8-226, § 4, 38 DCR 219; Apr. 20, 1999, D.C. Law 12-261, § 2003(n), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (b).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.